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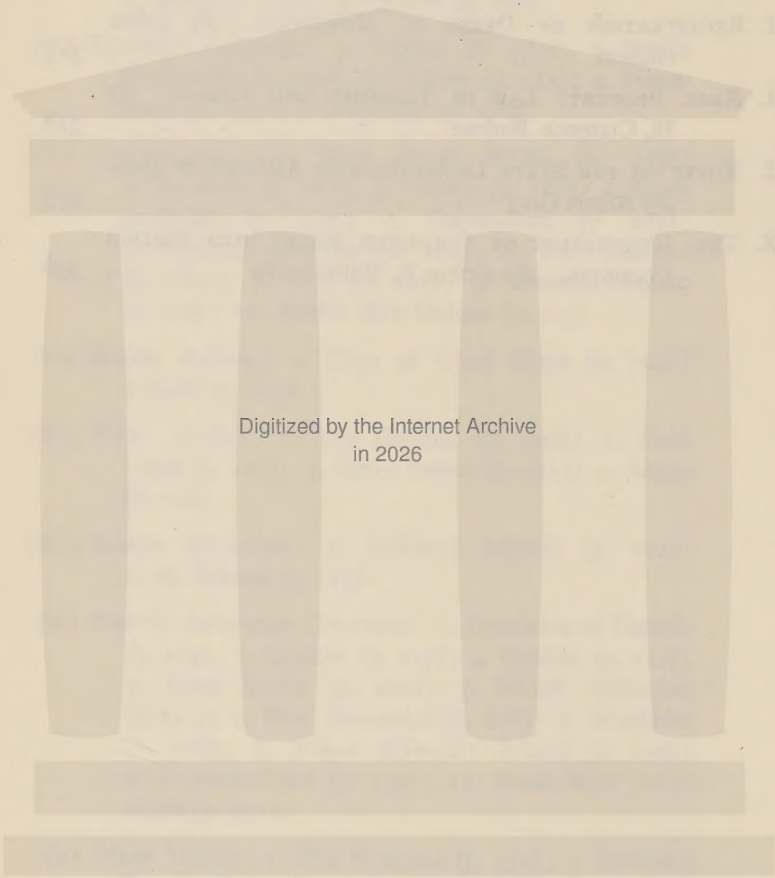

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ANNUAL MEETING.

THE Annual Meeting of the Society was held, by the kind permission of the Benchers, in the Old Hall of Lincoln's Inn, on Wednesday, March 10. Lord Herschell, who presided, gave a summary of the work done by the Society and its Committees during the year 1896.

A letter, signed by the president, calling attention to the objects of the Society, has been sent to the authorities concerned in Colonial and Indian legislation. The Committee on Statute Law has also circulated questions as to methods of legislation in the British Colonies. Of the replies received, a first instalment has already appeared in the Society's *Journal*, and replies from other Colonies will appear in the subsequent numbers. The Mercantile Committee has prepared questions in regard to bankruptcy and partnership law.

The Committee on Procedure prepared questions in regard to costs of litigation. Careful inquiry was made as to the quarters from which information might be obtained on this important subject, and Master Macdonell, assisted by Mr. Newton Crane, Mr. John Hunter, and Mr. Craies, has prepared a valuable report, which will be found in the March number of the *Journal*.

At the invitation of the Society, Sir Courtenay Ilbert read a paper on "The Application of European Law to Natives of India;" Mr. Clarence, formerly a Judge of the Supreme Court of Ceylon, was good enough to furnish a Note on the application of European Law to the natives of that island. Mr. Schuster also read a paper on the new Civil Code for the German Empire. These two papers, and Mr. Clarence's Note, have been published in the *Journal*.

At the meeting of the American Bar Association, held at Saratoga Springs in August, 1896, the Society was represented by Lord Russell of Killowen and Mr. Crackanthorpe, Q.C. Mr. Iselin, of Lincoln's Inn, attended the Berne International Literary Congress, held about the same time, and has made a report to the Society.

Besides the further replies from Colonial Governments on methods of legislation, and Master Macdonell's report on costs, the next number

of the *Journal* will contain a paper by Mr. MacIlwraith on "The Egyptian Government and the Caisse de la Dette."[1]

Mr. W. G. Clay is preparing a report on Employers' Liability in several European countries and British Colonies, including information as to schemes for Workmen's Insurance.[2] Mr. Brickdale, Assistant-Registrar in the Land Registry Office, has promised to report on systems of Land Transfer in Central Europe.[2] Mr. A. Wood Renton, editor of the *Encyclopædia of English Law*, now in course of publication, will contribute a paper on Arbitration.

If the work of the Society is to be carried on with effect, it is very desirable that a larger measure of support should be obtained from the legal profession. Of our subscribing members nearly half are drawn from the Colonies and foreign countries.

Mr. Crackanthorpe, Q.C., and other members of the Society having spoken, the report presented by Lord Herschell was adopted, and the meeting was adjourned. Among those present were Sir R. Herbert, G.C.B.; Sir Courtenay Ilbert, K.C.S.I.; Sir Raymond West, K.C.I.E.; Mr. Whitley Stokes, C.S.I.; Mr. Underdown, Q.C.; and the hon. secretaries, Mr. T. Raleigh and Mr. Albert Gray.

After the meeting, Mr. E. M. Underdown, Q.C. (Corresponding Academician of the Royal Academy of Legislation and Jurisprudence of Madrid, and Member of the Society de Legislation Comparée, etc.), submitted to the Executive Committee a memorandum on the value of the study of Comparative Legislation, written with the view of stimulating an interest in the subject amongst lawyers in England.

The Executive Committee commend Mr. Underdown's observations especially to the notice of junior members of both branches of the legal profession:—

"At the Annual Meeting of the Society, the Chairman, Lord Herschell, expressed his regret that the Society, though it was doing excellent work, had not attracted more attention among members of the English legal professions. It seems that the active co-operation of lawyers, except those who interest themselves in what are deemed academic subjects, cannot at present be hoped for; and it is of the highest importance to ascertain why this is the case.

[1] These papers appeared in No. 2 of the *Journal*. [2] Now published.

"Unfortunately, the law in England has been regarded as a closed book to the layman, or only to be approached from a point of view a little, if at all, higher than the horizon of petty sessions.

"On the Continent, on the other hand, the everyday occurrences of life are so regulated by legal rules that every one must have some knowledge of legal principles, and can obtain that knowledge from the codes; moreover, the law of each nation having much in common with those of neighbouring countries, scientific jurisprudence commands far greater attention, and several societies dealing with it exist and appear to flourish.

"Again, for a long time theories of legislation have here been rather discouraged than otherwise by the higher authorities in the law; common law and custom have toughly contested, as in old days, the progress of jurisprudence as founded upon the Roman Law, and the taunt that a jurisconsult is 'the man who knows a little of every law but his own,' does not lessen the British timidity of the student.

"But, confining one's investigation to the more utilitarian side of the matter: Do not the subjects which now every day more and more engage the attention of the largest branch of the legal profession require, on the part of practitioners, some knowledge of the principles, at least, which govern foreign legislation and jurisprudence, seeing that this country is the banker for, and practically the manager of, the enormous mass of business, public and private, national and municipal, wherein British capital is involved to the extent of millions?

"Now, every incident of this vast mass of investment of British savings depends upon *principles* of law, and even procedure, if not the opposites of the English system, still *essentially* different, and this because the legal ideas affecting them are of a different order and origin.

"It would, of course, be idle to expect from English lawyers a knowledge of procedure, or even of the special laws, of other nations; but, without a knowledge of the essential *differences* in principle, they are hardly in a position even to deal with many of the important questions in which they must intervene. Nor, indeed, can they put the necessary questions to foreign advisers, inasmuch as neither the terminology nor the words are equivalents.

"To take a few instances—

"'*The Family*.' The relations between the constituents are of a different kind, and the obligations far more definite.

"'*Trusts*,' in the sense of the holding by one for another, are non-existent. In France and Italy they are absolutely illegal, inasmuch as 'substitutions' are forbidden. Realty in the names of trustees would descend to their heirs, according to the local law, and no contrivance

can set this aside; all dispositions to the contrary effect are null. Trusts for marriage settlements are simply unintelligible to the foreigner.

"A *Mortgage* is not the equivalent of a *hypothèque;* the latter is an inscribed charge only, its foundation a debt.

"A *Company Limited* differs from a *Société anonyme.* The *Société en commandite* does not exist in England; an *English partnership* consists of *individuals* trading under any *name*—a foreign firm has a quasi-corporate legal existence as such.

"As to *procedure*, the rules of *evidence* are essentially distinct; *e.g.* in France no oral evidence in civil matters can be given as to amounts exceeding five hundred francs.

"Our elaborate theories as to *notice* are practically not applicable.

"Realty and personalty are similarly distributable in successions, but the local law will attach to realty with more or less strictness.

"Our remedial equitable legislation and the practice of injunctions have very little analogy with the survival of the 'interdicts.'

"In general, the foreign laws, civil and commercial, favour the debtor; our law, the creditor.

"Titles, conveyances, and charges to be good against third persons, must be inscribed, transcribed, or annotated under foreign law.

"Marriages between English women and foreigners give rise to great difficulties and complications.

"These remarks need not be taken to apply to the United States generally.

"From the above considerations it will be evident that, taking the enormous interests involved, English practitioners should no longer ignore the existence of laws and practices different from their own, whether obtaining in other parts of the British Islands, the Colonies, or in foreign countries. The general principles of Comparative Legislation and Jurisprudence must be matters of importance to them and to their clients. This Society will do good service if it assists in facilitating this study."

ERRATUM.

Vol. i. p. 367, last line but one, *for* "1870" *read* "1670."

PRELIMINARY NOTE AND INDEX TO REVIEW OF LEGISLATION OF THE EMPIRE, 1896.

THE review of the legislation of 1896 appears at a later date than the corresponding review for 1895. Some time necessarily elapses before the Acts of the various colonies and dependencies reach this country, and it was found, in 1896, that the record for the previous year could not be completed until an advanced date in the spring of the following year. Hence the preparation of the review was deferred until an inconvenient period, and the review itself had to be published in the unsuitable month of August. Under these circumstances it was thought advisable to defer the publication, and to some extent the preparation, of the review, until after the Long Vacation. If this should be thought to involve too long a delay, it must be borne in mind that the admirable *annuaire* of the foreign legislation of 1895, published by the French Society of Comparative Legislation, did not appear until November, 1897. It may, however, perhaps be found expedient to divide the annual summary into two portions, and to publish separately at an earlier date the portion for which materials are then available.

The attention which the Society has directed to colonial legislation has borne important fruits, and it has already become materially easier than it was a year or two ago to obtain, through the libraries of institutions such as the Inns of Court, information about colonial laws. Complaints are, however, still made, especially by members of the bar, about the difficulty of obtaining copies of these laws within a reasonable time after their promulgation. The librarians have doubtless done what they could, and are entitled to the gratitude both of members of the Society and of other students of comparative legislation for their efforts to supply, and make more generally available, information about colonial and foreign law. On the other hand, it would be unreasonable to expect the colonial authorities, whose resources are often scanty, and whose officials are always fully worked, to undertake the task of supplying copies of their laws to numerous public libraries in England. Possibly it may be found that they would be willing to increase the

number of copies which they supply to the Colonial Office, and that the Colonial Office would not be unwilling to supply on request copies to important public libraries.

In one or two cases it has been found impracticable, even at this late date, to obtain the information required for the review. But these cases are fortunately very few.

The legislation of the Empire during the year 1896 continues to present features of great and varied interest to students both of jurisprudence and of administrative law.

The student of constitutional law will probably find most interest in the steps towards federation which are being taken by the legislatures of the Australian colonies. Each of these colonies, except Queensland, has passed an Act adhering to the scheme of a convention to frame a Federal constitution for Australia. And both Queensland and Western Australia passed, in 1896, what are called "Referring Acts," under which, in exercise of the powers given by the Federal Council of Australia Act, 1885, they delegated to the existing Federal Council the power of legislating on matters considered to be of international importance, such as quarantine, patents, naturalization, and the mutual aid of colonial courts.

Queensland has regulated the eligibility of Crown officials to Parliament on principles similar to those embodied in the tangled mass of English enactments which begins with the Act of Anne. It has also fixed the allowances of members of the Assembly at £300 a year, with mileage and passage-money. Tasmania has found it necessary to reduce the allowances of members of the Council and House of Assembly from £100 to £50 a year. New South Wales has followed the recent English lead by enfranchising its policemen. South Australia has passed an Electoral Code under which there is a property qualification for council elections, whilst in elections to the Assembly any British subject who has been registered for six months may vote. Under the new electoral law for Tasmania an elector has one vote only, but may vote in the alternative for as many candidates as he pleases. He indicates his order of preference, and machinery is provided for transferring his vote from any candidate for whom it is not required. An Act of Natal illustrates the ways in which the parliamentary franchise is indirectly withheld from members of coloured races. It disqualifies for the franchise persons who (not being of European origin) are natives or descendants in the male line of natives of countries which have not hitherto possessed elective representative institutions founded on the parliamentary franchise, unless they obtain an exemption order from the Governor in Council.

In the fiscal legislation of the year, probably the most noteworthy

feature was the English Act for the reduction of rates on agricultural land. New Zealand exempted machinery from rating, and passed an elaborate Act for enabling districts to adopt unimproved value of land as the basis of assessment for rating purposes.

British Columbia and New Brunswick have been recasting their law as to municipalities. Cyprus has been extending the powers of its municipal councils, whilst New Zealand has apparently placed restrictions on the municipal power of closing roads.

The Cape and Natal have both been consolidating the Acts relating to their Supreme Courts and the law to be administered by them.

New Zealand has authorized the enrolment of women as barristers and solicitors.

In the department of criminal law and procedure the English Parliament has at last contrived to stop a loophole in the Larceny Act of 1861, through which receivers of stolen goods have been comfortably escaping for some thirty-five years.

Natal has dealt with the offence of cattle lifting by throwing the burden of clearing himself on a person in whose possession the head, skin, fleece, or other part of any cattle is found under suspicious circumstances, and also by fixing the responsibility for the value of stolen animals on the head of any native kraal to which, or to the neighbourhood of which, the "spoor" has been traced. This last provision closely resembles a custom which, according to Mr. H. G. Keene, used to prevail not long ago in the Delhi district of India.*

Reference was made in last year's Journal to the legislation which had been found necessary in West Africa for the suppression of "Human Leopards." This legislation has been followed up in 1896 by further provisions for the suppression of "Human Alligators," an unpleasant form of society which is noticed by Miss Kingsley in her recent travels.

The climate of the Straits Settlements perhaps explains why the legislature of that colony has been obliged to create a new offence by punishing the injection of morphine by unqualified persons.

Victoria has increased the stringency of its law against betting in streets, and Cyprus has imposed penalties for gambling in open places and places of public resort.

Ceylon has shown its confidence in the judicial calmness of its magistrates, by empowering them to punish perjury summarily as a

* "In the Delhi district from time immemorial the custom called 'Khoj' had prevailed. Whenever a herdsman lost any of his cattle he took up the track of their footsteps across the roadless plain, and on arriving at the first village where they seemed to stop, he was entitled to demand restitution unless the village could satisfy him that the track had passed on, when the responsibility was transferred to the inhabitants of the next place. This custom, reduced to a system and intrusted to the police, afforded a remedy more effectual than strictly lawful, for a great social evil."—Keene, "A Servant of John Company," p. 111.

contempt of court, and has enacted a somewhat inquisitorial procedure for the tracking out and detection of crime.

Western Australia has made the accused person, and his wife or her husband, a competent witness in all criminal cases triable summarily.

In the wide and varied field of administrative law, the most "burning" question of the year has been immigration. New South Wales, New Zealand, South Australia, and Tasmania have passed laws in various forms to prevent the immigration of coloured races; but these laws, with the exception of that of Tasmania, have failed to obtain the allowance of the Crown.

In the other hemisphere, Barbados, British Guiana, and Grenada have been legislating against pauper and criminal immigrants.

At the same time British India and the Straits Settlements have been regulating emigration, and the latter colony has granted larger powers for the protection of Chinese female immigrants.

The transition is natural from restrictions on immigrants to restrictions on the importation of animals and goods. In 1896 Newfoundland anticipated the Imperial Parliament by prohibiting the importation of prison-made goods. The Imperial Act of 1896, which required animals brought alive from a colony or foreign country to be slaughtered at the port of entry, finds its parallel in the legislation of New South Wales and of Natal against the importation of diseased stock and of hides and other articles liable to communicate disease.

The Board of Agriculture will also note with interest the "rinderpest" legislation of the Cape, and the legislation of Queensland with respect to diseases in stock and in plants, the mode in which New Zealand has endeavoured to deal with "Orchard and garden pests," and Tasmania has tried to keep out the Queensland cattle tick, and—to pass to more savoury subjects—the encouragement which has been given to Creameries associations in British Columbia.

The "bacteriologist," for whom the legislature of Manitoba has made provision, is doubtless concerned with human health as well as with the health of cattle and plants. New South Wales has largely increased the powers of its Board of Health. The United Kingdom has given the Local Government Board further powers of dealing with epidemic, endemic, and infectious diseases at ports, and Barbados has dealt on the same principle with "Yellow Jack." Trinidad has adopted special measures to prevent the spreading of the "yaws," a disease to which the African race appears to be specially subject. It is melancholy to find that leper legislation is required in Antigua, Jamaica, and Trinidad.

Liquor, as usual, provides occupation for numerous legislatures, and the Cape and Queensland have provided for the establishment of institutions for inebriates.

New Zealand has made anticipatory provision for a possible scheme of old age pensions in the future, by authorizing the grant of pension certificates to persons who, at the commencement of the Act, are of the age of 65 years or upwards, whose income, exclusive of personal earnings, does not exceed £50, and who comply with certain other conditions.

New Zealand has legislated against "baby-farming." Jamaica and Queensland have both passed laws against cruelty to children. Tasmania has consolidated and amended its laws with respect to destitute children and youthful offenders, and has established a State department for neglected children. And New South Wales has extended its system of boarding out children.

The educational legislation of the year presents no features of special interest.

The law relating to traffic and locomotion was signalized in the United Kingdom by the Acts for the encouragement of light railways and for the legalization of "autocars," or whatever is to be their future name. Queensland has passed a comprehensive railway law; and New South Wales has provided for electric traction. Lagos, in a law of much brevity and simplicity, has enabled the Government to make a railway wherever it pleases. The tendency of juries to give damages on a liberal scale against railway companies and against the Government is recognized by an Act of New South Wales, which limits the damages recoverable against the Railway Commissioners for personal injury on or about a railway or tramway.

The New Zealand Shipping and Seamen Act, which provides for the payment of wages at colonial rates on coasting voyages, has been the subject of much comment and controversy in the public press.

The legislation of the Australasian colonies, such as New South Wales and New Zealand, shows a tendency to increase the powers of authorizing mining operations on private lands.

The regulation of labour, both in special departments, such as mines and factories, and generally, has been the subject of numerous enactments. The Parliament at Westminster passed a Conciliation Act and a Truck Act. Natal, Barbados, and Trinidad regulated Employers' Liability on the lines of the English Act of 1880. Victoria fixed the rate of payment for overtime work in factories. The Dominion Parliament of Canada and the legislatures of Ontario, Quebec, and Manitoba, provided further securities for the payment of wages, and gave preferential rights in respect of wages. South Australia has also extended the workman's lien for his wages.

The law of marriage, the relation of husband and wife, and other branches of family law, are touched on at various points. Ontario has consolidated its statutes about marriage. Tasmania has been making

provision for civil marriages. The custom of inheritance through sisters' sons, which prevails among the Nairs of Malabar, is based upon a system of polyandry. But it is apparently consistent with monogamy, and the Madras Legislature has provided for the registration of monogamous marriages between observers of this custom. Natal has validated certain registered marriages between Indian immigrants. Jamaica has dealt in a simple and summary way with some of the difficulties arising out of the loose marriages of Indian coolies who are brought into the island. The Protector of Immigrants is directed to find which of the immigrants stand in the relation of husband and wife to each other. When he has thus paired them, he registers them, and they are "deemed to be married."

New Zealand, South Australia, and Western Australia have followed English legislation by empowering magistrates to give married women summary separation and protection orders in cases of ill-treatment. And Victoria has adopted the provisions of the English Act of 1893 as to married women's contracts.

Both Western Australia and Nova Scotia have passed Acts recognizing the practice of adoption of children, and authorizing courts to make orders which place adopted children in the same legal position, with certain exceptions, as if they were born of the marriage of their adoptive parents.

Private law occupies much less space in the annals both of home and of colonial legislation than public, and in particular administrative, law.

The year 1896 witnessed another of the recurrent attempts to amend the law of landlord and tenant in Ireland.

Commercial lawyers will be interested in the "no-liability" companies which are being recognized in Australia, in the Chattels Transfer Acts of New Zealand, Queensland, and Tasmania, which occupy the same ground as Bills of Sale Acts, and in the restrictions placed by Victoria on the assignment of book debts.

Natal has laid down a copyright law for the colony, and has extended the duration of copyright in telegraphic messages. New Zealand has extended the protection of its copyright law to photographs.

The legislation of the Western Pacific illustrates the restrictions which it is necessary to impose on contracts with natives.

The list of English Acts adopted, either absolutely or with slight modifications, by colonial legislatures, is, as usual, very long. The Sale of Goods Act, 1893, was adopted by five legislatures in 1896. It is now in force in the Isle of Man, Gibraltar, Ceylon, Hongkong, Victoria, South Australia, Western Australia, Queensland, New Zealand, Tasmania, Barbados, Trinidad, Jamaica, and Manitoba.

Some of the Crown colonies appear, from the legislation of the year, to be taking steps for the revision and consolidation of their statute law.

Among the curiosities to be noticed in the review of legislation are the fact that an Escheator-General survived until 1896 in Barbados, and that among the trades and professions for which a municipal licence is required in British Columbia is that of astrologer.

We are again indebted to Mr. H. L. Ormsby for undertaking the laborious task of indexing the annual review.

C. P. ILBERT.

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THE LAW

OF

EMPLOYERS' LIABILITY.

THE LAW OF EMPLOYERS' LIABILITY

AND

INSURANCE AGAINST ACCIDENTS.

By Walter Gorst Clay, Esq., of the Inner Temple.

INTRODUCTION.

In all countries where a law of employers' liability exists, it is based upon one or other of two essentially distinct principles—compensation for a wrong, and indemnity against a peril. The first principle has been developed, in spite of the many difficulties arising in its application, by the decisions of courts of law into a finished system, under which a workman is relieved from the consequences of many injuries which befall him in the course of his employment. The second principle requires to support it the fiction of a contract of indemnity, a fiction which the courts have never been willing or able to establish. In some countries—France and Belgium may be named—attempts have been made to bring about the adoption of this principle, spoken of as the doctrine of professional risk, without the assistance of the legislature, but they have had small success, nor are the times favourable for the development of fresh fictions of the law.

On neither principle is it possible to found a system which will satisfy the practical necessities of the case without offending the sense of justice either of the employer or of the workmen. The conviction appears to be gaining ground that the only satisfactory solution of the question is to be found in abandoning altogether the idea of employers' liability, and in treating the problem as being essentially that of putting on a sound economic basis a portion of the necessary taxation of the State. For as the care of the injured workman and the support of those whom, were he uninjured, he would have to maintain, fall in the last resort upon the State, it is the duty of the State to provide that the funds required for the discharge of this liability shall be raised in an

equitable manner from among its subjects. If the production of a commodity exposes the workmen engaged in making it to unavoidable danger, or renders carelessness on their part liable to be punished with disproportionate severity, it seems only fair that the consumers of that commodity should themselves bear the burden thus laid upon the State, and should not be able to satisfy their wants at the expense of other sections of the community. If it is possible to accept as generally true the economic law that a tax levied on the producer of manufactured goods is ultimately borne, not by him, but by the consumer, the ideally just distribution of liability can be obtained by an insurance system under which premiums proportional to the risk of injury involved are laid upon the manufacturers, and by them recovered from their customers.

Questions as to the precautions against accident upon the adoption of which the State may properly insist, and as to the enforcement by penal provisions of the duty of taking care, which is incumbent upon both employers and workmen, alike for their own sake and for that of the community, are essentially distinct from the problem of averting the consequences of danger which is, in theory or in practice, inevitable, nor does it seem possible to lay down any general principles for their determination. Details as to the scope and extent of the insurance, in relation to both the persons insured and the accidents to be compensated, and as to the burden of proof in contested cases, may rightly be settled upon grounds of pure expediency.

In order to give some unity to the description given below of the laws of the different countries, a short statement is here given of the leading principles of the English Common Law, which will serve to indicate the points at which the systems of other countries branch off.

These principles are four in number.

(1) The employer is responsible for his own wrongful acts.

This is adopted in all systems of law.

(2) The employer is responsible for the wrongful acts of his servants in the course of their employment.

No entirely satisfactory explanation of this principle has ever been given, and it was not accepted by the Roman law, which only held the employer liable when there was some personal shortcoming on his part, such as negligence in the selection of his servants (the so-called *culpa in eligendo*). It was however enacted in the Code Napoleon, and is to be found in the statute book of most countries in which the influence of that code has made itself felt.

(3) The employer is not responsible to one servant for injuries sustained by the wrongful act of another servant engaged in a common employment.

This is the doctrine of common employment. It is practically confined to the Common Law and systems based upon it, although it has sometimes been adopted by other countries in the interpretation of the Code Napoleon.

(4) The employer is not responsible for the consequences of risks voluntarily undertaken by the workman.

It is from this principle that the doctrine of common employment was originally derived. Apart from this it is not of very wide application, though there is a dangerous vitality about it, which leads to its sometimes reappearing in unexpected places. It is the direct contrary of the principle of professional risk spoken of above.

Some explanation of the arrangement adopted in this article may be useful. After a description of the legislation, actual or proposed, in this country, the laws, for the most part derived from it, of the Colonies and the United States are dealt with. Next is given an account of the three great accident insurance systems in actual operation—those of Germany, Austria, and Norway. As much of the interest of these systems lies in the details of their organization, a somewhat full account is given where the materials for it are available. Switzerland is treated next, as being a country with a well developed system of employers' liability already in force, which is maturely considering the advisability of adopting a scheme of accident insurance. Finland, Russia, and Hungary follow, the first as having adopted, the others as considering, proposals which to a certain extent combine the two systems, and are marked by a distinct originality of their own. Of the remaining countries little need be said, as matters remain for the most part in the form of projects, usually on well-established lines, and presenting few features of interest. In some cases notes have been given of the results of the operation of the laws; but no attempt has been made to render them complete, as the necessary statistics are not easily procured and much of the subject is too controversial to be suitable for discussion in the pages of this Journal. A uniform plan has where possible been adopted in describing the details of Acts or Bills, so as to facilitate the comparison of one country with another.

I. THE UNITED KINGDOM

The first and at present the only statute to modify the Common Law rules as to compensation for injuries was the Employers' Liability Act of 1880 (43 & 44 Vict. c. 42), which received the royal assent on September 7, 1880.

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This Act abolished the doctrine of common employment in cases where personal injury was caused to a workman—

(1) By reason of any defect in the condition of the ways, works, machinery, or plant connected with or used in the business of the employer.

(2) By reason of the negligence of any person in the service of the employer, who has any superintendence entrusted to him whilst in the exercise of such superintendence.

(3) By reason of the negligence of any person in the service of the employer to whose orders or directions the workman at the time of the injury was bound to conform, and did conform, where such injury resulted from his having so conformed.

(4) By reason of the act or omission of any person in the service of the employer done or made in obedience to the rules or bye-laws of the employer, or in obedience to particular instructions given by any person delegated with the authority of the employer in that behalf.

(5) By reason of the negligence of any person in the service of the employer who has the charge or control of any signal, points, locomotive engine, or train upon a railway.

But the workman is not entitled to sue—

(1) Under the first head above, unless the defect therein mentioned arose from, or had not been discovered or remedied owing to the negligence of the employer, or of some person in the service of the employer, and entrusted by him with the duty of seeing that the ways, works, machinery, or plant were in proper condition.

(2) Under the fourth head above, unless the injury resulted from some impropriety or defect in the rules, bye-laws, or instructions therein mentioned; provided that where a rule or bye-law has been approved or has been accepted as a proper rule or bye-law by one of Her Majesty's Principal Secretaries of State, or by the Board of Trade or any other department of the Government under or by virtue of any Act of Parliament, it shall not be deemed for the purposes of this Act to be an improper or defective rule or bye-law.

(3) In any case where the workman knew of the defect or negligence which caused his injury, and failed within a reasonable time to give, or cause to be given, information thereof to the employer or some person superior to himself in the service of the employer, unless he was aware that the employer or such superior already knew of the said defect or negligence.

A "workman" was defined by reference to the Employers and Workmen Act, 1875 (38 & 39 Vict. c. 90), as meaning a railway servant, and any person, who, being a labourer, servant in husbandry,

journeyman, artificer, handicraftsman, miner, or otherwise engaged in manual labour, whether under the age of twenty-one years or above that age, has entered into or works under a contract with an employer, whether the contract be made before or after the passing of the Act, be expressed or implied, oral or in writing, and be a contract of service or a contract personally to execute any work or labour, but domestic or menial servants are not included.

A "person who has superintendence entrusted to him" was defined as meaning a person whose sole or principal duty is that of superintendence, and who is not ordinarily engaged in manual labour.

A limit is fixed to the amount of compensation recoverable under the Act; namely, the estimated earnings, during the three years preceding the injury, of a person in the same grade employed during those years in the like employment and in the district in which the workman is employed at the time of the injury. The employer is also entitled to deduct the amount of any penalty he may have been compelled to pay to the injured person or his relations in respect of the same cause of action; and if compensation is recovered under the Act, he cannot afterwards be sued for the penalties.

Notice in writing of the injury must be given to the employer within six weeks, and the action commenced within six months, or, in case of death, within twelve months from the time of death. Failure to comply with these provisions is a bar to the action, unless, in the case of death, the judge is of opinion that there is reasonable excuse for such want of notice. The action must be brought in the County Court in England, or in the corresponding local courts in Scotland or Ireland. The Act was originally to be in force only to December 31, 1887, but it has since been continued from year to year by the Expiring Laws Continuance Act.

The defects in the Act of 1880, though much discussed, were not seriously taken in hand by the Government until the formation of Mr. Gladstone's third administration in 1892. A bill was introduced by Mr. Asquith on February 2, 1893, particulars of which follow in the form in which it was read a third time by the House of Commons on November 23, 1893.

It abolished entirely the doctrine of common employment, and provided that a workman was not to be deemed to have accepted any risk incident to his employment, by reason only of his having entered upon or continued in the employment after he knew of the risk. It also gave the usual rights to compensation in cases where, in any employment in which the risk of injury to health could be mitigated or removed by the use of reasonable precautions, the death or temporary

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or permanent disablement of a workman was caused by the neglect of such reasonable precautions.

A "workman" was defined as including every person who has entered into or works under a contract of service or apprenticeship with an employer in the United Kingdom or on board a British ship, whether the contract is express or implied, or is oral or in writing, but members of a crew of a fishing vessel were not included where such members, though not part owners, are joint adventurers with the owners.

A "ship" was defined as including every description of vessel or boat.

An "employer" was defined as including the representatives of a deceased employer.

The bill also included a provision intended to meet the difficulties arising in the case of sub-contractors. Where any person in the execution of any work within the scope of his trade or business, and for the purpose of executing such work, has occupation of or control over the place or premises in or upon which any such work is to be done, he is liable for the negligence of a sub-contractor and his workmen, as if they were in his own employment, but is entitled to indemnity from the person primarily liable.

Actions were to be brought in the County Court as before, but power was given to either party to remove them to the High Court if the amount claimed exceeded three hundred pounds. The employer was entitled to the benefit of such portion as was referable to his contributions, of the monies received by the workman or his representatives from any fund to which he had contributed.

Contracting out of the right to compensation given by the bill was forbidden, but this prohibition did not apply to compromises made after accrual of the right to sue.

It was this last provision that led to the shipwreck of the bill. In the House of Lords an amendment was carried which added a further exception to the prohibition against contracting out. This amendment, in the form in which it was finally insisted upon by the Lords, provided that the enactment against contracting out was not to apply to any agreement for assurance against injury which had been made between workmen and their employer before the date of the passing of the Act, and which subsequently should be approved by two-thirds of the workmen voting in the prescribed manner, or to any future accession of workmen in the same service to such an agreement.

Neither was it to apply to any such agreement made after the passing of the Act which should have been approved as aforesaid, and in respect of which the Board of Trade should have certified that it

provided reasonable compensation in all cases of injury from whatever cause incurred in the course of employment, and that the compensation was paid from a fund to which the employer contributed not less than one-third, but the Board of Trade were not to certify in any case where, in their judgment, the ordinary course of business or employment was such that by frequent changes of workmen it was not possible to ascertain the free opinion of the workmen employed.

If the insurance fund was insufficient to provide the agreed compensation, and the employer was unwilling to make up the deficiency, the workman was remitted to his rights under the Act. The employer was forbidden to make it a condition of engagement with the workman that he should enter into any such agreement.

The Board of Trade were empowered to make provision for taking the votes of the workmen above referred to by secret ballot, or otherwise in such a way as to insure their voting freely and without constraint, and might provide for such votes being taken again after intervals of not less than three years.

The Government and the majority in the House of Commons refused to accept the Lords' amendments, and on February 20, 1894, the bill was dropped.

The subject was not taken up again by the Government until the present session of Parliament. A bill dealing with the question of compensation was mentioned in the Queen's speech, but up to the time of writing it had not been brought in.

II. THE BRITISH COLONIES.

The Employers' Liability Act of 1880 has been adopted with more or less important modifications by most of the self-governing Colonies. With regard to those that have neither adopted the Act nor legislated on their own lines upon the same subject, it must be borne in mind that the provisions of the Common Law do not apply in all of them, and thus there is less need of reform. In the province of Quebec, for instance, the doctrine of common employment is unknown. In the description of the colonial legislation which is given below, the enactments of the different Colonies are grouped so as to show the particulars in which they differ from the British Act.

The following list gives the names of the Colonies which have adopted the Act, the title and date of the laws by which this was done, and particulars of extensions and amendments. Unless the contrary is stated the Acts are permanent.

BRITISH COLONIES.

New Zealand, by 1882 No. 20, of September 13, 1882, amended by 1891 No. 10, of August 19, 1891, and 1892 No. 21, of September 24, 1892.

New South Wales, by 46 Vict. No. 6, of November 21, 1882, amended and made permanent by 50 Vict. No 8, of August 27, 1886.

St. Vincent, by 1884 No. 7, of July 3, 1884.

South Australia, by 47 & 48 Vict. No. 325, of November 14, 1884.

Cape of Good Hope, by 1886 No. 35, of June 25, 1886.

Queensland, by 50 Vict. No. 24, of November 10, 1886.

Victoria, by 50 Vict. No. 894, of December 13, 1886, now 54 Vict. No. 1087, Pt. III., of July 10, 1890. It was continued to December 31, 1895, by 57 Vict. No. 1343, of November 6, 1893; it was then allowed to lapse, but has since been continued to December 31, 1897, by 60 Vict. No. 1466, of December 24, 1896.

British Columbia, by 54 Vict. c. 10, of April 20, 1891, amended by 55 Vict. c. 18, of April 23, 1892.

Ontario, by 55 Vict. c. 30, of April 14, 1892, amended by 56 Vict. c. 26, of May 27, 1893.

Manitoba, by 56 Vict. c. 39, of March 11, 1893, amended by 58 & 59 Vict. c. 48, of March 29, 1895.

West Australia, by 58 Vict. No. 3, of October 10, 1894.

Tasmania, by 59 Vict. No. 25, of October 24, 1895, the Act extending only to December 31, 1898.

Natal, by 1896 No. 12, of June 1, 1896.

Workmen within the Scope of the Act.

Queensland includes drivers or conductors of a coach, cart, carriage, tramcar, or other vehicle.

The New Zealand Act of 1891 repeals the definition of "workman," taken from the English Act, which was inserted in the Colonial Act of 1882. The definition substituted for it was—

"'Workman' means any person, male or female, whether under or over the age of twenty-one years, who, under contract with an employer, whether made before or after the passing of the Act of 1882 or this Act, contracts personally to do or perform any work or manual labour of any kind, whether technical, skilled, or unskilled, and whether such contract be oral or in writing, express or implied."

A domestic servant of either sex is not within the Acts.

By an amending Act passed in 1892 "workman" is to include any railway servant under the Railway Commissioners.

Victoria and Tasmania exclude persons employed in or about any mine, for whom special provision is made, as to which see below.

Ontario and British Columbia include tramway and street-railway servants. Ontario and Manitoba exclude servants in husbandry, gardening, or fruit-growing.

The Cape of Good Hope Act has no definition of workman.

Employers within the Scope of the Act.

In West Australia and New Zealand "employer" includes the Governor or any Minister acting for or on behalf of the Crown or the Government within the Colony.

The New Zealand Act of 1892 includes the Railway Commissioners under the term "employer," and so, in effect, does also the Queensland Railway Act of 1888 (52 Vict. No. 8, s. 67).

Sub-Contractors.

By the New Zealand Act of 1892, where the employer employs a contractor to do part of his work, or where such a contractor employs a sub-contractor, the employer is liable to a workman employed by the contractor or sub-contractor for any injury resulting from a defect in plant belonging to or provided by the employer, provided such defect arose, or was not remedied, owing to the negligence of the employer, or of some person entrusted by him with the duty of seeing after the condition of the plant. This liability is without prejudice to the liability of the contractor or sub-contractor to the employer, or to the rights of the workman against his immediate employer, but the workman can only recover compensation once.

Similar provisions are found in the British Columbia and Ontario Acts.

Injuries within the Scope of the Act.

Ontario, British Columbia, and Manitoba include accidents on a railway due to over-bridges being too low, or to the space between the rails and the points or guard-rails not being properly packed.

British Columbia includes accidents arising from a defect in the construction of any stages, scaffolds, or other erections erected by or for the employer, or in the materials used in the construction thereof.

The Cape of Good Hope Act extends s. 1 (5) of the English Act to cover the negligence of a person in charge of any hauling gear in or about any mine, but a later clause provides that the Act is only to take effect within such mining areas as the Governor may from time to time proclaim.

Natal applies this sub-section to any person in charge of any machinery or hauling gear. St. Vincent omits it altogether.

BRITISH COLONIES.

South Australia applies it to tramways as well as railways, and British Columbia and Ontario to tramways and street-railways.

Victoria and Tasmania omit the qualification that the "person who has superintendence entrusted to him" must be "not ordinarily engaged in manual labour."

South Australia omits the provision as to authorized bye-laws in s. 2 (2) of the English Act.

New Zealand expressly provides that the workman is not to be entitled to recover damages in respect of an injury arising from his own negligence. Queensland gives him no remedy if he has caused or contributed to the injury by his negligence or unfitness for work.

New Zealand and British Columbia provide that a workman is not to be deemed to have voluntarily incurred risk by reason of his continuing in the employment with knowledge of the risk. New Zealand enacts that the defence of common employment is not to avail the employer unless the workman whose negligence caused the injury was not only engaged in a common employment, but was in the employ of a common employer.

Amount of Compensation.

The limit of three years wages is generally adopted, but the compensation may amount to $2,000 in British Columbia or $1,500 in Ontario.

In New Zealand the limit may be exceeded if the judge, upon the request of three-fourths of the jury, certifies that such an amount would not give a fair and reasonable compensation, but this proviso does not apply in the case of an apprentice or articled pupil, nor may the amount of the compensation in any case exceed £500 in respect of any one cause of action.

Insurance.

According to the Queensland Act, where the workman is insured, and the employer has contributed not less than one third of the premium for the current period, the amount received under the policy is to be deducted from the compensation.

According to the New South Wales, South Australia, West Australia, and New Zealand Acts, the Court in assessing compensation is to take into consideration any payment or contribution made by the employer to the workman on account of the injury, and also the value of any insurance or compensation which the workman receives by reason of any payment or contribution made by the employer.

Notice of Accidents.

In Victoria and Queensland the notice of injury is to be given within three months; in Ontario, British Columbia, and Manitoba within twelve weeks.

In Queensland, New South Wales, and West Australia the clause excusing notice is not confined to cases of death; in South Australia this clause is omitted altogether.

In New South Wales the Court is empowered to amend defects in any notice or to dispense with it altogether; the South Australia Act also confers on the Court a wide power of amending defects and dispensing with notice.

In the Cape of Good Hope and Natal Acts all the provisions relating to notice are omitted, and it is merely provided that the action must be commenced within six months.

According to the New Zealand Act of 1891, notice of injury may be given by the solicitor or agent of the workman, and where the workman is physically or mentally incapable of giving notice, or his medical adviser thinks it would be injurious to do so, he may give notice within one month of the time when he becomes capable of giving it, and has a further period of three months within which to bring his action.

In Manitoba the action may be brought any time within two years after the accident, and the provisions relating to the form and service of the notice are repealed.

Procedure.

Most of the Acts provide for cases under the Act being tried before cheap tribunals corresponding to the English County Courts, but the machinery naturally differs in different Colonies. The British Columbia and Ontario Acts contain elaborate provisions for the appointment of assessors.

The Cape of Good Hope and Natal Acts contain no provisions as to procedure.

Contracting Out.

This is forbidden in Queensland, South Australia, West Australia, and New Zealand.

In Ontario, British Columbia, and Manitoba it is not allowed unless—

(1) There was other consideration for the contract than the employment of the workman.

(2) The other consideration was, in the opinion of the Court, adequate.

(3) In the opinion of the Court the contract was not improvident, but was just and reasonable.

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and the burden of proof of all these facts lay upon the employer. Contracting out was not allowed in the case of the injuries on railways referred to above.

Miscellaneous Provisions.

New Zealand and West Australia provide that in case of the death of an illegitimate workman, his mother, and his brother and sisters by the same father and mother, have the same rights to compensation as if he were legitimate.

New Zealand and West Australia, British Columbia and Ontario, provide that the cause of action for compensation under the Act is to survive against the personal representatives of a deceased employer.

Extension of the Act to Seamen.

This was first done in Queensland by the Act 52 Vict. No. 3, of October 23, 1888, which defines a "seaman" as meaning every person employed upon a "ship," whether at sea or in port, and a "ship" as including every vessel of whatever kind, whether propelled by steam, sails, oars, or otherwise, and gives compensation for injuries caused by defects in tackle, etc., or absence of necessary or usual tackle, etc., or due to the negligence of a person in superintendence or to whose orders the injured person was bound to conform.

The terms of this Act are very wide, and some of its provisions appear to be beyond the competence of a Colonial Legislature; accordingly, when it was adopted by New Zealand in 1891 and New South Wales in 1893, various restrictions were adopted.

The Acts in question are—

New Zealand, No. 10, of August 19, 1891.

New South Wales, 56 Vict. No. 6, of March 24, 1893.

The injury to give rise to a claim for compensation under these Acts must occur in navigable waters within or in the jurisdiction of New Zealand, or while the ship is moored or at anchor receiving or discharging cargo or coals within the jurisdiction of New South Wales. In New South Wales the definition of "seaman" is restricted to a person employed upon a ship owned in the colony, or who has signed articles of engagement in the colony.

In New South Wales the proviso of s. 2 (1) of the English Act is, *mutatis mutandis*, expressly enacted for the protection of the employer.

In South Australia the extension of the Act to seamen was effected in a somewhat different manner. The Act 52 & 53 Vict. No. 458, of November 13, 1889, provided that the definition of "workman" in the principal Act was to include a seaman, or other person engaged in

manual labour upon a ship or boat. A defect in the rigging, tackle, etc., was to be deemed a defect in the ways, works, etc., mentioned in s. 1 (1) of the English Act, but the injury, to give rise to a claim for compensation under the Act, must occur in a South Australian port.

Mines.

The Mines Regulation Acts of Victoria, New Zealand, and Tasmania contain provisions, substantially agreeing with one another, imposing liability upon the owner to pay compensation for injuries occurring during mining operations.

The Acts at present in force are—

Victoria, 54 Vict. No. 1120, of July 10, 1890.
New Zealand, 1891, No. 33, of September 21, 1891.
Tasmania, 57 Vict. No. 24, of November 14, 1893.

They contain minute regulations intended to insure safety in mines, and go on to provide that if any person is killed owing to the non-observance of any of these regulations, such non-observance not being solely due to the negligence of the person injured or killed, or owing to the negligence of the owner of the mine, his servants or agents, the person injured or his representatives may recover compensation from the owner by way of damages as for a tort committed by such owner. This compensation is to be a charge on the mine or mining plant.

Victoria and New Zealand further provide that any accident occurring in a mine is to be *primâ facie* evidence of negligence on the part of the owner. There is no limit to the amount of the claim, and rights under the general law are not taken away; but in Victoria, as mentioned above, miners are excluded from the operation of the Employers' Liability Act, and in New Zealand a person proceeding under the general law forfeits his rights under the Mining Act.

As to procedure, the New Zealand Act makes the machinery of the Employers' Liability Act applicable. In Victoria claims may be heard by the mine wardens, who have jurisdiction up to £250.

III. THE UNITED STATES.

The subject of employers' liability falls to be dealt with by the several State Legislatures and not by Congress. Accordingly the greatest diversity of treatment prevails both in the interpretation of the common law and in the enactments of the different States. The decisions of the Courts have generally been more favourable to the

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workmen than in England, and except in one or two States, such as Massachusetts, the doctrine of common employment has not been pushed to anything like the same extent as here. According to judicial decisions in many of the States, a person in superintendence is not in a common employment with the workmen under his superintendence, and, in some cases, as shown below, this is expressly enacted. In other States it has been decided that workmen employed in different and distinct branches of the same business are not in a common employment. The decisions on the subject are collected in the "Second Special Report of the Commissioner of Labour," 2nd edit., pp. 40–69.

The State legislation on the subject consists of—

(1) Enactments which seem merely to declare the Common Law.

(2) Enactments founded on the English Act of 1880.

(3) Enactments aimed primarily at the railway companies, but which, in some cases, have a wider application.

These three classes are dealt with in succession.

(1) California (Civil Code, ss. 1969–1971), Montana (Civil Code, ss. 2660–2662), North Dakota (Code, 1895, ss. 4095–4097), South Dakota (Code, 1887, ss. 3752–3754) enact in identical terms that the employer must indemnify the employee for losses due to want of ordinary care on the part of the employer or to his instructions, or incurred in direct consequence of the discharge of the employee's duties, but not for losses suffered in consequence of the ordinary risks of business, or, except in Montana, of the negligence of another employee in the same general business, unless the employer has neglected to use ordinary care in selecting such employee.

(2) Alabama (Code, 1886, s. 2590) adopts s. 1 (1) to (5) of the English Act, and includes the provisoes of s. 2 (1), (3). Damages recoverable under this section are not subject to any debts or liabilities of the employee, and, in case of death, are divided according to the Statute of Distribution, (ss. 2591, 2592).

Massachusetts (1887, c. 270; 1888, c. 155; 1892, c. 260), adopts s. 1 (1), (2), and (5), and s. 2 (1), (3). If the employee is instantly killed, or dies without conscious suffering, his widow, or, if at the time of death they were dependant upon his wages for support, his next-of-kin, may recover damages for his loss, which are to be assessed according to the degree of culpability of the employer or of the person for whose negligence he is made liable. The amount may not be more than $5000, or less than $500. If the death is not instantaneous, or is preceded by conscious suffering, the minimum does not apply; where the injuries are not fatal the damages are limited to $4000. Notice of the

accident must be given within thirty days, and the action commenced within a year. There is a provision similar to that in the New Zealand Act of 1891, to meet cases where the workman is incapable of giving notice. If the employer has contributed to an insurance fund, he is entitled to the benefit of such portion of the insurance monies as is referable to his contributions. Domestic servants and farm labourers are not within the Act, and there is a clause relating to contractors similar to that in the New Zealand Act of 1892.

Colorado (1893, c. 77) also adopts s. 1 (1), (2), and (5), and s. 2(1), (3). The amount of damages is limited to $5000. Notice must be given within sixty days, and the action commenced within two years. Contractors are treated as in the Massachusetts Act.

(3) Florida (1891, c. 62), Georgia (Code 1882, s. 3036), Iowa (Annotated Statutes, s. 1307), Kansas (General Statutes of 1889, s. 1251), and Minnesota (General Statutes of 1894, s. 2701) abolish the doctrine of common employment so far as concerns railway servants.

Other States limit the definition of common employment. Thus Texas (1893, c. 91) and Arkansas (Digest of Statutes, 1894, ss. 6248, 6249) enact that all railway servants who are entrusted with authority of superintendence, control, or command of other employees, or with authority to direct any employee, are vice-principals, not fellow servants. Other persons engaged in a common service and working together to a common purpose, of the same grade, with no authority over one another, are fellow servants; but employees of any other branch or department of the service are not. Utah appears to have adopted a similar provision.

Montana (Civil Code, 1895, s. 905) says that the liability to an employee, acting under the orders of a superior, shall be the same in case of injury sustained by default or wrongful act of his superior, or to an employee not appointed or controlled by him, as if such servant or employee were a passenger.

Indiana (Annotated Statutes, 1894, s. 7083) adopts s. 1 (1), (3)–(5), in the case of railroad and other (except municipal) corporations, and gives the employee his action in cases where the injury was caused by the neglect of any person engaged in the same common service, at the time acting in the place, and performing the duty of the corporation in that behalf, and the person so injured was obeying or conforming to the order of some superior having authority to direct him.

Mississippi (Code 1892, s. 3559) and South Carolina (Const. art. 9, s. 15) enact that railways shall be liable where injury results from the negligence of a superior agent or officer or of a person having the right to control or direct the party injured, or from the negligence of a fellow servant employed in another department, on another train, or on a

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different piece of work. Mississippi further provides that knowledge of defective appliances is not to prevent recovery, except in the case of conductors or engineers who take trains or engines known by them to be unsafe.

Ohio (1890, c. 125) makes a defect in the condition of any car or locomotive *primâ facie* evidence of negligence on the part of the company, and provides that persons who have power or authority to direct or control, whether in the same or in any other branch or department, are not fellow servants of an employee who has no such power or authority.

Wisconsin (1893, c. 220) makes the railways liable for injuries due to defects in locomotives, cars, etc., when the defects could have been discovered by reasonable care, and for injury while the employee is operating, running, riding upon, or switching trains, etc., if the injury is caused by the carelessness or negligence of any other employee, officer, or agent. Proof of the defect is *primâ facie* evidence of negligence on the part of the railway company. This State (1889, cc. 123, 438) also makes the railways liable to employees for injury incurred without contributory negligence, where the damage is caused by the negligence of any train despatcher, telegraph operator, superintendent, yard-master, conductor, or engineer, or of any other employee who has charge or control of any stationary signal, target point, block, or switch.

New Mexico (1893, c. 28) makes the railways liable for injury caused by a co-employee, when it could have been avoided by reasonable care in selecting competent employees, or by not allowing or requiring them to work an unreasonable number of hours, also for injury caused by defective cars and locomotives, if such defect could have been discovered by reasonable care.

Contracting Out.

This is forbidden by the laws of Arkansas, Colorado, Florida, Georgia, Indiana, Iowa, Massachusetts, Minnesota, Mississippi, Montana, New Mexico, Ohio, Texas, South Carolina, Wisconsin, and Wyoming.

Special Enactments.

The mining laws of many of the States contain minute regulations for the safe working of the mines, and enact that the employer is liable to his workmen for any injury caused by non-compliance with these regulations, or by failure to supply any of the required appliances. Many States also require, under a similar penalty, the points on railway lines to be blocked and packed.

I am indebted for most of the information contained in this section to a memorandum kindly supplied to me by Mr. Dana Durand, the legislative sub-librarian, University of the State of New York. *UNITED STATES.*

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During the earlier part of this century the strict principles of the Roman law prevailed in North Germany, and the employer was only responsible for the wrongful acts of his servants, if he could be shown to have been negligent in their selection. This state of things was first modified by the Prussian Railway Law of November 3, 1838, which made the companies liable for injuries sustained in the working of the railway by passengers and others, unless they could prove that the injury was due to the negligence of the injured person himself, or to some occurrence which was unavoidable or beyond their control. They are not allowed to rely upon the dangerous character of their undertaking as a circumstance excusing them from responsibility. These or similar provisions were adopted by other North German States.

The law remained in this condition until shortly after the restoration of the German Empire, when the Employers' Liability Act of June 7, 1871, came into operation. According to this the railway companies were responsible in damages if any person was killed or injured in the working of the railway otherwise than by *force majeure*, or his own negligence; the owners of mines, quarries, pits, and factories were responsible in damages if any person was killed or injured owing to the negligence in the exercise of his duties of any manager, foreman, or overseer. No defined scale of compensation was laid down by the Act, which merely stated that it was to consist of nursing and funeral expenses and a sum equivalent to the loss sustained by the person compensated, owing either to his diminished capacity for work or to the loss of his means of support. The employer was entitled to the benefit of any sum received from an insurance or friendly society, provided he had contributed not less than one-third of the premiums. The compensation was to be paid in the form of a pension, unless both parties consented to its being commuted, and the Court might require security to be given for its payment. The award might be subsequently revised if the consequences of the accident turned out different from what had been first expected, and security could also be imposed or increased at any time. The period of limitations was two years from the date of the accident or the date of the death, and contracting out was forbidden.

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The defects in this law soon made themselves apparent, and the rapid industrial development of the Empire brought with it a steady increase in the number of accidents for which no compensation could be obtained. The question of its amendment was much discussed; the idea of effecting this by making the liability of the employer more stringent was gradually abandoned in favour of a system of State insurance, and ultimately the question was taken up by the Government in 1881 as part of the scheme of State socialism upon which it then embarked. The subject was under discussion in the Reichstag or its committees during the years 1881, 1882, and 1883, until the scheme was finally elaborated and became law in the Act of July 6, 1884.

The law of insurance against accidents is probably the most successful part of the social legislation undertaken in Germany during the last decade. It is free from the complications of the old age and sickness insurance, the working is rendered as far as possible independent of the Government, and every care is taken to prevent disputes arising which would be likely to produce illwill between employer and employed.

The main features of the system may be thus summarized:—The workman is insured against all injuries except those deliberately caused by himself, thus all questions of negligence, contributory negligence, and voluntary undertaking of risk are avoided. The basis upon which the amount of compensation is to be calculated is laid down by the law, while payment of the compensation awarded is made by the State, which afterwards recovers it from the employers. For the purposes of the law the employers are grouped into associations, according to the different branches of industry carried on by them in the case of the trade and sea insurance, according to their territorial situation in the case of the agriculture and forestry insurance; these associations are, except as to part of the agriculture and forestry insurance, self-managing, and have very large powers of decentralization and delegation. They are also entrusted with the very important power of making and enforcing regulations for the prevention of accidents. The associations assess the employers belonging to them and collect their contributions, the amount raised in any one year being normally that required to cover the year's expenses of administration, and the instalments of compensation falling due during the year. Nothing is paid directly by the workmen themselves, but it is considered that part of the burden of support in case of accident falls upon them on account of their contributions to the sick insurance, to the benefits of which persons injured by accident are also entitled. The general working of the system is superintended by the Imperial Insurance Office (*Reichs-Versicherungs-Amt*), a separate department of the Government, upon which workmen and employers are

equally represented. The office controls and stimulates the action of the various associations, and also acts as a court of appeal from many of their decisions.

A detailed description of the system follows below, but it may be convenient to state here that three different kinds of accident insurance exist in Germany:—

(1) The trade insurance, under the Acts of July 6, 1884; March 28, 1885; and July 11, 1887.

(2) The sea insurance, under the Act of July 13, 1887.

(3) The agriculture and forestry insurance, under the Act of May 5, 1886.

These three kinds of insurance, while working upon the same lines, differ considerably in their administrative details; hence in some parts of the following description it is necessary to treat them separately. Where nothing is said to the contrary the description may be taken as applying to all three, but in many cases differences of detail have not been noticed. All the Acts contain special provisions applicable to the case of workmen in the employ of the Empire, the States composing it, or other public bodies; these have been entirely omitted, as they are not of any general interest.

Persons Insured.

(1) *The Trade Insurance.*

In order to determine whether a person is within the compulsory insurance law it is necessary to look at the character of the industry or business in which he is engaged. If the industry is within the Acts the right and obligation to insurance extend to all workmen (*Arbeiter*), and all foremen (*Betriebsbeamten*[1]) whose yearly earnings do not exceed 2000 marks.

The provisions of the Acts as to the trades and industries subject to them are long and complicated, but it is not necessary to consider them in detail, as practically all descriptions of workmen, except domestic servants, engaged within the territories of the Empire in any trade or industry other than agriculture or forestry, are entitled to the benefit of the law, being either specially included or coming under one or other of the following heads:—

(1) Trades concerned with minerals, mines, quarries, etc.

[1] Foremen is, perhaps, as good a translation as any of the word *Betriebsbeamten*. It appears to include all persons entrusted by the employer with any kind of superintendence or direction. The distinction between the *Arbeiter* and the *Betriebsbeamten* is not an important one in practice, as it is not likely to be contended that a person receiving more than 2000 marks a year is a mere workman.

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(2) The building trades in the widest sense of the word, including the construction of railways, canals, wells, irrigation works, etc., together with all trades accessory to building operations, such as painting, joinering, etc.

(3) The transport trade in all its branches, including warehousing, packing, etc.

(4) Businesses in which any form of power is employed, *e.g.* the presence of an hydraulic lift in an hotel entitles all persons employed in it to be insured.

(5) Factories properly speaking, under which term are included all concerns in which any substance is regularly subjected to any process of manufacture or treatment, and in which not less than ten men are regularly employed.

Domestic servants are included if they are employed in connection with an establishment under the law, and so are members of the employer's family working in the concern, but a partner is not within the law.

The obligation to insure does not extend to soldiers and such like. Persons employed in the civil and military service of the Empire or any of the States or of inferior Government authorities, and enjoying the right to a pension, are provided for by other laws, and are not included in the insurance scheme.

The duty to insure may also be extended by the statutes of the associations to foremen whose wages amount to more than 2000 marks a year, and to small masters in the building trade who do not regularly employ other workmen under them; and the statutes may also permit the employers in establishments within the law to insure themselves and other persons not subject to it. In the case of employers in the building trades this insurance of themselves and others is a matter of right, but, unless the statutes allow it, the employer can only insure himself up to 2000 marks. Of the 63 trade associations existing, 51 have provided for the insurance of foremen earning more than 2000 marks, 53 for that of employers, and 34 for that of other persons.

(2) *The Sea Insurance.*

The persons insured under the law of July 13, 1887, are—

(1) Persons employed in the German mercantile marine as sailors, engineers, stokers, officers, or in other capacities on board ship.

(2) Captains of ships, provided that they receive pay or maintenance.

(3) Persons employed within the territorial limits of Germany upon

floating docks or the like, in pilotage, in salvage of persons and goods, or in the watching, lighting, and maintenance of waters frequented by maritime commerce.

The ship must be one sailing under the German flag, and employed either exclusively or principally upon sea voyages, that is to say, in the foreign or coasting trade, and not merely in inland waters in communication with the sea (estuaries, etc.), even although these waters may be frequented by sea-going vessels. The Act does not apply to the crews of fishing vessels, or to vessels of a capacity not exceeding 50 cubic metres which are neither equipped for sea voyages, nor propelled by steam or other mechanical power; the Federal Council has however power to extend the obligation to insure to these two classes of vessels.[1]

Shipowners who are not within the Act, pilots who carry on their vocation on their own account, and the employers in the other businesses insured above, may, if they think fit, insure themselves and persons employed by them who are not within the Act. The insurance is compulsory only for persons whose yearly earnings are less than 2000 marks, but the association has power to extend this limit by its statutes.

Disputes as to the extent of the obligation to insure are determined by the Insurance Office, after consultation with the board of the association.

Some of the branches of industry mentioned above were also included in the trade insurance; it was provided that the employers were to quit the trade associations and join the sea association, if the whole of their business was within the sea insurance law; in other cases they were to remain as before.

It should be noted that vessels engaged in inland navigation were already included in the trade insurance, hence the two branches of the law together seem to cover the whole ground.

(3) *The Agriculture and Forestry Insurance.*

The persons insured under the law of May 5, 1886, include all workmen and foremen whose earnings do not exceed 2000 marks, employed in agriculture and forestry properly speaking, and in occupations accessory to agriculture and forestry which are not included in the trade insurance.

The terms used in the Act and translated above are rather vague; the law therefore expressly provides that gardening for purposes of

[1] By decision of the Federal Council steam trawlers engaged in sea fishery are within the Act from July 1, 1895.

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(1) Battues organized for the destruction of vermin.
(2) Peat-cutting, and sand-pit working for agricultural purposes.
(3) Breeding, and keeping of stallions for stud purposes.
(4) Barking trees and charcoal-burning in the forest.

The employers have the right to insure persons employed by them but not within the Act, *i.e.* foremen getting more than 2000 marks a year. They have also the right to insure themselves if the yearly return of their labour does not exceed 2000 marks, and the statutes of the associations may dispense with this restriction. A person engaged in agriculture may insure himself even though he does not employ any labour.

The associations may by their statutes extend the obligation to insure to foremen earning more, and employers earning less, than 2000 marks. The different States of the Empire are also empowered to determine by legislation whether the employers themselves, and members of their families working for them, are to be included in the insurance, and on what conditions. Wurtemburg and Baden have availed themselves of this power to exclude children under the age of twelve, Hesse excludes those under the age of fourteen.

Of the forty-eight agricultural associations, the statutes of forty-four provide for the compulsory insurance of employers, and the statutes of eighteen for that of foremen beyond the limit of 2000 marks. Of the four associations which do not compel the employers to insure themselves, one allows them to do so up to 3000 marks, another up to 5000 marks; the remaining two do not make any provision on the subject.

Injuries Insured Against.

These include all injuries not deliberately caused by the injured person himself. In practice injuries so caused, apart from cases of suicide, are very rare. The injury must be incurred by the workman in the course of his employment. In the sea insurance it is especially provided that the right extends to the case of accidents due to natural causes (*im Folge der Elementarereignissen*), but not to those happening to a person on leave, or who has quitted the ship without permission. The insurance does not extend to diseases of employment

Scale of Compensation.

(1) *The Trade Insurance.*

(a) *Injuries not resulting in death.*

The compensation consists of:—

(1) Sickness expenses from the beginning of the fourteenth week after the accident.

(2) A pension beginning at the same time and lasting during the continuance of disablement from work.

If the disablement is total, the pension is equivalent to two-thirds of the average daily wage of the person injured; if it is partial the pension is reduced proportionally to the loss of earning power.

In place of the sickness expenses the injured person may be provided by the association with free treatment and nursing in a hospital, but if he is married or lives with some member of his family, this can only be done without his consent when the injuries cannot be properly treated at his own house. While he is in hospital those belonging to him receive the pensions to which they would be entitled if he were dead.

Refusal by the injured person to go into hospital, or to submit himself to the medical treatment provided, may be punished by the withdrawal of the sickness expenses and by the reduction of his pension.

(b) *Injuries resulting in death.*

Compensation is paid according to the above scale until death takes place; afterwards it consists of—

(1) The funeral expenses, the allowance being twenty times the average daily wage, but not less than 30 marks.

(2) Pensions to widows, children, and ascendants.

The widow gets each year 20 per cent. of the yearly earnings of her husband, provided she was married to him before the date of the accident. If she re-marries she gets three years pension in discharge of all further claims. Each child that loses its father gets 15 per cent., or, in the case of the death of both parents, 20 per cent., up to the age of fifteen. The ascendants of the deceased, if he was their sole support, get 20 per cent. among them, parents being preferred to grand-parents, until they die or become able to support themselves. These pensions must not altogether exceed 60 per cent. of the yearly earnings; if they do the ascendants lose their pensions and the others abate rateably. When this happens and pensions subsequently fall in, those remaining are restored to their full amount.

The Insurance Office has decided that children born after the accident are entitled to pensions, and that if the deceased was a woman, the

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The average daily wage of the injured person is obtained by dividing his total earnings during the year preceding the accident by the number of days of the normal number of hours worked during the year. If he has not been employed a full year in the business where the accident occurred, the average wage is taken of the same class of workmen employed in the same business or in some similar business in the neighbourhood. In the case of season trades the average wage during the season is taken without regard to the earnings of the injured person during the rest of the year. In calculating the daily wage, account is also taken of payments in kind and premiums, the former being valued according to the ruling prices in the district.

If the amount thus arrived at is less than the average daily wage of adult workmen in the district, as determined according to the provisions of the sickness insurance law, that average wage is used in calculating the pensions. This provision is required to meet the case of young persons, apprentices, and such like. If the daily wage exceeds 4 marks, one-third only of the excess is taken into account.

The yearly earnings are obtained by multiplying the average daily wage by 300, or, if the accident occurs in an establishment where employment is continuous throughout the year, but the number of days worked is normally greater or less than 300, by the normal number of days worked in the establishment.

As stated above, the pensions given in case of injury do not begin until the end of thirteen weeks after the accident, the injured person being looked after in the mean time by the sick clubs. But the employer is bound from the commencement of the fifth week after the accident to bring the sick pay received by the injured person under the sick insurance law, up to an amount not less than two-thirds of the average daily wage. The employer pays the required amount direct to the sick club, together with his other contributions to it. In the rules laid down by the Insurance Office on this subject, it is provided that if the injured person is being treated in hospital the amount of sick pay need only be brought up to one-sixth of the average earnings, or to one-third if the victim has persons depending on him. If the injured person is not insured under the sickness insurance, the employer has to make him such allowance as the sick club would have had to make. This provision for payment from the fifth to the thirteenth week does not apply in the case of persons employed in the Regie-bau [1] and insured under the Act of 1887.

See below, p. 37.

The Act originally made no provision as to who should take the initiative in enforcing this liability, and, in consequence, the employers frequently escaped payment. This was remedied by a clause in the Sickness Insurance Act of April 10, 1892, which required the sick club to report the accident, if the injured person was still on the sick list at the end of the fourth week, to the general or sectional board of the association in which he was insured.

(2) *The Sea Insurance.*

The scale of compensation is substantially the same, but a few differences require to be noticed.

A shipowner is bound under the shipping law of Germany to provide medical treatment for his captain and crew; accordingly the obligation to provide compensation under the Act does not come into operation until the obligation under the shipping law has ceased. In other cases within the Act the thirteen weeks limit applies, and if the sickness expenses are not provided in any other way, the employer must supply them himself. Their value is normally taken as equivalent to one quarter of the wages earned.

The yearly earnings of persons employed on board ship are calculated in an entirely different way. In view of the fact that employment is not usually continuous throughout the year, the yearly earnings are taken at nine times the average monthly earnings, during employment, of persons employed in different capacities on board ship. These average earnings are taken from a table drawn up by the Imperial Chancellor and revised every five years, which is based upon the average wages paid during the three preceding years. The table in use was originally issued in 1887, and was confirmed without alteration in 1893. It divides the persons employed on board ship into nine groups, and allots to captains and engineers monthly wages varying between 80 and 300 marks according to the class of their ship, to officers and pilots between 70 and 120 marks, to able seamen 45 marks, ordinary seamen 30 marks, and cabin boys 15 marks a month. The earnings of persons not included in any of the groups are taken at three-quarters of those of ordinary seamen.

To the yearly earnings thus calculated is added, for the purpose of calculating the pension of the injured person himself but not that of his surviving relatives, a sum equal to two-fifths of the yearly earnings of an able seaman as determined above. This is supposed to represent the value of the food obtained on board. Any bonuses, etc., usually given are also to be taken into account.

For other persons insured under the Act of 1887, the yearly earnings

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are taken at the sum fixed by the higher administrative authority of the place where the work is carried on as the average earnings of the same class of workmen, but this sum may not be less than three hundred times the average daily wage of adult workmen. In the case of persons insuring themselves under the permissive clauses, the statutes of the association have to determine the manner in which the earnings are to be calculated.

Some differences not worth specifying exist as to the amount allowed for funeral expenses. It is also provided that where the injured person was partially disabled before the accident, and consequently was earning less than the normal wage, it is only the diminution of his capacity that is to be taken into account in calculating his pension.

(3) *The Agriculture and Forestry Insurance.*

Here the burden upon the employer is somewhat lightened, and the labour of calculating the pensions simplified. If the injured person is not entitled during the first thirteen weeks to be supported by a sick club, the burden of supporting him falls not upon the employer, but upon the commune in which he worked. He is only entitled to free maintenance and treatment, and does not receive sick pay, nor is the employer compelled to make a supplementary allowance from the fifth to the thirteenth week as in the trade insurance.

The pensions are based not upon the wages actually received by the injured person himself, but upon the average earnings from all sources of labourers in agriculture and forestry. The scale is fixed by the higher administrative authority of the district after consultation with the authorities of the communes. It must provide separately for males and females, for adults, and for young persons under the age of sixteen. Separate scales may also be laid down for agriculture and for forestry. The earnings of the employers insured are taken at the same rate as those of labourers, unless the statutes of the association provide otherwise. If the earnings exceed four marks a day, one-third only of the excess is taken into account. In the case of persons partially disabled before the accident the pension is calculated as in the sea insurance.

The associations may take power by their statutes to provide that the pensions shall be paid in kind, either wholly or partially, in cases where the wages upon which they are based were so paid either wholly or in part. All the associations except six have availed themselves of this power.

The allowance for funeral expenses is taken at one-fifteenth of the yearly earnings as defined above.

Assessment and Payment of Compensation.

(1) *The Trade Insurance.*

The machinery established by the Acts for ascertaining the amount of compensation due, and paying it, will best be understood by following out the course of procedure in a particular case.

If an accident which appears likely to result in disablement from work of more than three days' duration occurs in an establishment subject to the law, the employer must forward a written report of it to the police authority of the place within two days of the date when the accident comes to his knowledge. The report may be made by the managers of the business or of the department in which the accident occurred, and it is their duty to make it if the employer is absent or cannot himself do what is required. Default can be punished by the board of the association to which the employer belongs with a fine of 300 marks.

This report gives particulars as to the name and address of the injured person, the sick club to which he belongs, and the nature, circumstances, and cause of the accident.

The next step is the police inquiry, which must be held as soon as possible when the accident has caused death or appears likely to result in disablement from work for more than thirteen weeks; the inquiry is directed to ascertain the nature and causes of the accident, the injuries due to it, and the persons entitled to compensation.

It may be attended by representatives of the employer, of the association, and of the sick club to which the injured person belongs. These last practically represent the workmen themselves, for they are members of the sick clubs, and the delegates of the employers on the boards of these clubs take no part in their election.

Where, owing to the accident taking place at a distance from the ordinary residence of the injured person, these representatives cannot conveniently attend the inquiry, provision is made for substitutes being appointed in their place.

The association pays the expenses of any expert witnesses that may have been called at the inquiry, and also indemnifies the representatives of the sick clubs for their loss of time. The rest of the costs of the inquiry are considered ordinary police charges. The association may also at its own expense cause inquiries to be held into accidents whose consequences are not likely to extend beyond thirteen weeks.

The result of the inquiry is drawn up in the form of a *procès-verbal*, which is open to inspection by all persons interested.

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The association is furnished by the report and *procès-verbal* with most of the data required for the assessment of the compensation, but it may replace or supplement them by information which the law empowers it to obtain from other sources. In particular it can require the employer to furnish all necessary information as to the earnings of the workman. Delay in furnishing this information is punishable with a fine of 300 marks, and incorrect information with one of 500 marks.

The association must proceed forthwith to assess the compensation. Such portion of it as consists of pensions of a permanent character, *i.e.* likely to last more than six months, is fixed by the board of the association, the rest normally by the sectional boards, if the association is divided into sections; the statutes may transfer the work of assessment to committees of the boards, special commissioners, or confidential agents. In cases of death the work can be done once for all, but in cases of injury where the injured person is still under treatment at the end of the thirteen weeks, a provisional assessment is made until such time as the treatment is at an end, and the final award is then made.

In all cases the association must before fixing the amount forward to the persons interested a statement showing the amount proposed to be awarded, and the figures as to daily wage, percentage of disablement, etc., upon which it is based. The person entitled to compensation has eight days within which to formulate his objections.

The definitive award must be made in writing, and communicated to each of the persons interested. It must show how the amount is arrived at, and state the name of the president of the board of arbitration, and the time within which an appeal to it must be lodged. If changes subsequently occur in the circumstances upon which the award is based, it may be revised at any time at the instance either of a person interested or of the association. An increase in the award takes effect from the date upon which the claim for it was made, a diminution only from the date of the association's decision.

The award once made, the medical, nursing, and funeral expenses are payable within eight days; the pensions are payable monthly in advance. The board of the association sends an order for payment to the postal authorities, and advises the person entitled of the amounts and dates of payment and of the post-office where he will be paid. Provision is made for changing the office in cases of change of residence. In urgent cases the payments may be made direct.

It is perhaps worth mentioning that it has been found necessary to simplify the machinery for carrying out these payments through the

post-office. They were at first attended with a great deal of red tape, and required the use of thirteen forms, a number now reduced to four.

In the case of miners a slightly different procedure exists, for the association is empowered to arrange for the pensions being paid through the miners' societies (*Knappschaftskassen*) instead of through the post-office.

So far the various steps have been considered as automatically taking place in consequence of the report of the accident, but the machinery may also be set in motion by any person claiming to be entitled to compensation, provided the claim is made within the period of limitation. The claim should be made to the association to which belongs the business where the accident occurred, or, if it is not affiliated to any association, to the lower administrative authority of the district.

If this authority thinks that the business in which the accident has occurred is not within the Acts it rejects the claim; if the contrary, it causes the employer to join the proper association, forwards the claim to it, and advises the claimant accordingly. From a decision rejecting the claim an appeal lies within four weeks to the Insurance Office.

Cases frequently occur in which the claim is addressed to the wrong association. This would often cause difficulty and might lead to the claim being statute-barred. A circular of the Insurance Office, dated April 20, 1893, recommends various means to the associations with a view of mitigating these inconveniences. The associations should make arrangements among themselves for taking temporary charge of injured persons without first deciding which is properly responsible, and when a claim is rejected as being addressed to the wrong association, the name of the one which appears to be liable should be indicated.

From a decision rejecting a claim for compensation upon any other ground than that the business in which the accident has occurred is not within the Act, and from an assessment of compensation, any person aggrieved may appeal within four weeks to a board of arbitration (*Schiedsgericht*), the constitution of which must next be described.

For each association, or for each section of an association, a board of arbitration is appointed. It consists of a president and four assessors, for all of whom deputies are also appointed. The president is appointed by the Government of the State in which the district of the board is situated, and must be a public official of some sort not employed in any establishment belonging to the association. Of the four assessors, two are chosen by the association or section, and must be members of the association or managers of some business attached to it, but may not be members of the general or sectional board, or confidential agents. The remaining two assessors are elected by the workmen's delegates for

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the association or section,[1] and must be men insured by the association and employed in some business attached to it. Service as assessor is obligatory, and lasts for four years, half of the number being re-elected every two years; those retiring are eligible for re-election, but may refuse to stand. At the sittings of the board, which are usually open to the public, the president or his deputy must be present, together with an equal number of employers' and workmen's assessors, at least one of each being in attendance. The board has power to take evidence upon oath, and, when fully attended, decides by a majority of votes. The expenses of the board of arbitration and the necessary costs of proceedings before it are borne by the association; it may also give costs against the unsuccessful party. The president is paid for his services by the Government, and is forbidden to receive any remuneration from the association. All the assessors are entitled to their out-of-pocket expenses, and the working men receive also payment for their loss of time.

From the decisions of the board of arbitration, so far as they allow or refuse compensation of a permanent character, an appeal lies to the Insurance Office.

Claims on the part of relatives of deceased persons may give rise to difficult questions of law and fact. The boards are therefore empowered to remit the claimants to the ordinary civil courts to prove their relationship, and may require them to commence proceedings for that purpose within a fixed time of not less than four weeks.

(2) *The Sea Insurance.*

For accidents occurring on shore the procedure is practically the same as in the trade insurance, but for casualties on board ship special provisions are required. The captains are required to log any accident that may happen at sea, and to report the circumstances to the first shipping authority they come to. If the accident occurs while the ship is in German waters this must be done within two days. The report is transmitted to the shipping authority of the vessel's port of registry.

The inquiry is conducted by some shipping authority, usually that within whose jurisdiction the ship first comes after the accident, or by the police in the absence of such an authority. Where it has to take place out of Germany, the captain must give an account of the circumstances on oath to the shipping authority, the German consul, who is empowered to examine on oath any persons who can throw light upon the matter, and to use other means of inquiry. Special provisions of this nature are required, as the representatives of the injured person and

[1] See below, p. 51.

others cannot usually be present on such occasions. If no inquiry has been held within six months of the accident being reported, the shipping authority of the port of registry must conduct one itself. The assessment of the compensation takes place in the ordinary way, but the Act charges with this duty the section of the association belonging to the port of registry, not that belonging to the place where the accident occurred or where it was reported.

When a ship is lost at sea the claim by the relatives of persons lost with her cannot be made until a year from the date of the loss or from when she was last heard of. This period is considered too long, and the association has sought power to abridge it. The pensions in such a case date from the loss or from a fortnight after the date when the ship was last heard of.

The assessors representing the men on the boards of arbitration must be either persons insured by the association or else experts in shipping matters. They are not elected on any uniform plan, arrangements suitable for each district being made by the Government of the State in which the district of the board is situated, or by the Insurance Office if it extends into more than one State.

(3) *The Agriculture and Forestry Insurance.*

The procedure is substantially the same as in the trade insurance. The report of the accident need not be in writing. As the sickness insurance does not extend to persons employed in agriculture, there are no representatives of the sick clubs to take part in the inquiry. They are replaced by persons nominated for the purpose by the communal authorities, by whom are also appointed the working men assessors on the boards of arbitration.

Alienation of Compensation.

The right to compensation for accidents and the pensions awarded cannot be alienated, nor can they be attached except for the maintenance of the wife and legitimate children of the pensioner, or for the repayment of advances made by the poor-relief unions. In the trade insurance, if the pensioner is an alien and resident out of Germany, his pension may be commuted. The building trades and sea insurance Acts provide that payments to any person out of Germany may be suspended, and that the pension of an alien may be commuted by the payment of three times its yearly amount.

Contracting Out.

This is forbidden.

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PERIODS OF LIMITATION.

Claims for compensation must be made within two years from the date of the accident, or, if the injured person has been awarded a pension and afterwards dies, from the date of his death. Claims made afterwards can only be entertained if the effects of the accident did not make themselves felt within this period, or if the person entitled was prevented by circumstances beyond his own control from making his claim earlier. In the case of a ship which goes to sea and is never heard of again, the period of two years begins at the date on which, according to ss. 866, 867 of the Commercial Code, the ship may be considered lost.

ADMINISTRATIVE ORGANIZATION OF THE INSURANCE.

(1) *The Trade Insurance.*

(a) *Formation of the Trade Associations.*

The Act of 1884 contemplated the formation of numerous associations (*Berufsgenossenschaften*), each embracing one trade only or several allied trades, extending over the whole Empire, or limited to particular districts. The existence of competing associations was not allowed; an employer was not to have the option of belonging to one or other of two associations, but for every trade in a district there was to be an association to which all the employers engaged in the trade within the district were to belong. This restriction would have interfered with the natural grouping of the different branches of the transport trade, hence they were exempted from its application.

Apart from this the employers were left to take the initiative in forming associations as they might think fit, subject only to three conditions, imposed in order to secure the formation of stable associations embracing the whole area to be covered.

These conditions were—

(1) The number and importance of the businesses included in an association must not be so small as to endanger its financial stability and permanence.

(2) The association must include all such businesses as naturally group themselves with it, and are too small in number or importance to form a separate association by themselves.

(3) A separate association fulfilling all the necessary conditions must not be demanded by a minority of the proposed members.

As a preliminary measure the law required all employers engaged in businesses within the Act to send to the lower administrative authority

of the district a statement of the situation, character, etc., of their businesses, and the average number of men employed. An elaborate classification of the different kinds of trades and businesses was made by the Insurance Office, and the different statements sent in were grouped according to it. Provision was made for getting the necessary information in the absence of these statements and for punishing default in furnishing them. As a result of all this, the Insurance Office found itself in the possession of information about 158,000 different businesses employing 2,787,000 hands, and was thus able to deal with the proposals for the formation of associations submitted to it by the employers.

The next step was the drafting of a scheme for an association by some self-constituted committee of employers, which then forwarded to the Insurance Office a request to call a general meeting of the employers intended to be included in the proposed association for the purpose of considering the draft. If the Insurance Office considered that the first condition named above was complied with, and that the request was supported by employers representing one-twentieth of the members of the proposed association, or one-tenth of the men employed by them, it caused the meeting to be summoned. If it further appeared that the scheme excluded employers whose exclusion would be fatal to it under the above conditions, it caused these employers also to be summoned. At the meeting, which was attended by a representative of the Insurance Office, the different employers had voting powers depending upon the number of workmen employed by them. If the scheme was approved with or without amendments it was laid before the Federal Council for its sanction. The Council might approve or reject the scheme, or send it back for alteration. When the scheme was finally approved, its adoption was announced in the Reichsanzeiger, and it became effective.

If the proceedings just described did not result in the adoption of a satisfactory scheme, or if the employers in any branch of industry did not take the initiative in drafting one themselves, a plan was elaborated by the Federal Council in consultation with the employers interested, and announced in the same way.

In either case a fresh meeting of the proposed members was called in order to elect a provisional board of direction, and to settle the statutes of the association.

The Act provided that these statutes were to contain provisions relating to—

(1) The title and seat of the association.

(2) The constitution and powers of the board of direction.

(3) The summoning of general meetings of the association, and the procedure thereat.

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(4) The voting powers of members of the association, and the admission of their proxies.

(5) The rules to be observed by the officers of the association in classifying the different businesses according to their risks.

(6) The procedure to be adopted in the case of changes in the businesses or their owners.

(7) The consequences of businesses being closed, and the security to be taken when this happens for the payment of contributions due or to become due from the owners.

(8) The allowances to be made to the representatives of the workmen.

(9) The preparation, examination, and auditing of the yearly accounts.

(10) The exercise of the association's power of inspecting the businesses and of making regulations for the prevention of accidents.

(11) The method of making alterations in the statutes.

A model form of statutes was drafted by the Insurance Office, but there are very considerable differences in the form of those finally adopted by the associations.

With the approval of its statutes by the Insurance Office the association enters into full working order. It is a corporation, and possesses corresponding legal rights and liabilities.

From what has been said above, it appears that the Insurance Office played a very important part in the formation of the associations. An appeal lay in most cases from its decisions to the Federal Council, whose determination was final.

It may be conveniently mentioned in this place that the Act provides means of dividing associations up or uniting several into one. Such alterations require the consent of the Federal Council. Any disputes arising in consequence, as to the rights and liabilities taken over, or as to the division of reserve funds, are to be decided by the Insurance Office, sitting as a Court. Two or more associations may, without uniting, agree to bear in common the whole or any part of their liabilities. In no case does any use appear to have yet been made of these powers.

The extent to which the power of initiative given by the law was used by the different industries may be gathered from the fact that, of the sixty-two associations formed under the Acts of 1885 and 1886, all except six were started in that way.

Some particulars as to the grouping of the associations may be of interest. Twenty-six extend over the whole Empire, among the more

important of which are the associations for mining, quarrying, manufacture of pottery, the chemical industry, papermaking, distilling, and brewing. For the iron and steel trades six associations were formed, which include iron and steel works and the manufacture of machinery; in Westphalia the two branches are separated. Wood-working accounts for four, metal-working for two, inland navigation for three, and the building trades for twelve of the remaining associations. As for the textile trades, the silk industry forms an association by itself; Silesia, Saxony, and Alsace-Lorraine have each an association covering all other textiles. For the rest of the Empire one association was formed for the linen, jute, and hemp industries, while the remaining textiles are divided among three others, each with a separate district.

The same freedom of initiative could not be allowed in the case of the building concerns brought in by the law of 1887. These included the construction of railways, canals, roads, irrigation works, etc. (the so-called *Tief-bau*), and building operations carried out on their own account by private persons not engaged in the building trade (the so-called *Regie-bau*). The works of the first class, owing to their temporary nature, required a special financial treatment, and were therefore grouped into an association by themselves. The same considerations applied to the second class of works, but the persons carrying them out were too numerous and too changeable to form members of a stable association, and therefore the insurance of the workmen employed by them was placed in the hands of the associations already formed for the building trades under the Act of 1884.

(b) *The Management of the Trade Associations.*

The Act provides for the affairs of the trade associations being conducted by means of a general meeting and board, sectional meetings and boards, and confidential agents (*Vertrauensmänner*). Membership of the association, with the rights and liabilities pertaining thereto, is determined by inscription upon the register of members. The preparation of this is one of the first duties to be undertaken by a newly formed association, and it requires to be kept constantly up to date as new businesses are opened or old ones closed within its district. In the case of industries existing when the law came into operation the necessary information was supplied by the declarations spoken of above, and when a new business is opened a similar declaration has to be made. In the absence of such, the association acts upon information supplied by the lower administrative authority to the association board.

As might be expected, many difficulties have arisen in determining

GERMANY. to which association a particular business properly belongs. This has been especially the case where two different trades were carried on in the same establishment. The law merely provided that undertakings of which two different businesses formed essential parts were to belong to the association proper for the principal business. If the businesses are distinct, though under the same ownership, it seems to be the practice to treat them as independent, and allow them to belong to different associations. To facilitate the work the Insurance Office issued a long list, extending over twenty-six pages, of the different kinds of industry, indicating to which association they should belong. After entry upon the register, a certificate of membership is sent to each member. Provisions are made by the law, but need not be detailed here, for its rectification in cases of change of business or change of employer. Generally speaking, an appeal lies to the Insurance Office in all disputes concerning entry upon the register, but subject to this it is conclusive evidence of membership as between employer and association.

The general meeting consists normally of the members of the association themselves, or the managers of businesses attached to it. In other cases, if the statutes so direct, it consists of delegates of the members elected in the prescribed manner. Some such provision is needed to avoid the expense, in an association extending perhaps over the whole Empire, of the employers' personal attendance. The decisions of the meeting are taken by a bare majority of votes, but the voting power of the persons present may depend upon the number of workmen they employ or represent. The model statutes provide for an ordinary meeting once a year, and extraordinary meetings whenever required.

The Act provides that the general meeting must reserve to itself the examination and auditing of the yearly accounts, the election of members of the general board, and the alteration of the statutes. The following duties are also attributed to it:—

(1) The determination of the amounts to be carried to the reserve fund.

(2) The punishment of members who decline to serve in any of the offices of the association.

(3) The settlement of the scale of expenses allowed to officers of the association.

(4) The decision of questions affecting the scope and area of the association.

(5) The settlement of the co-efficients of risk of the businesses attached to the association.

According to the model statutes, the general board consists of ten members and as many deputies. The persons serving upon it must be members of the association or their legal representatives. The statutes may also declare eligible the managers of businesses attached to the association, and, in the case of the mining association, the delegates of the miners' societies (*Knappschaftsälteste*). Service upon the board is obligatory, and lasts for four years, half of the number being re-elected every two years; retiring members are eligible for re-election, but may refuse to stand. The functions of the board consist in transacting the general business of the association, and doing everything which is not by the Act or the statutes reserved to the general meeting, or handed over to the sectional boards or the confidential agents. The model statutes contemplate the election by the board out of its members of a president, vice-president, treasurer, and secretary, and that ordinary meetings will be held once a month, eight days previous notice being given, but the Act provides for the members being consulted by letter in cases of urgency. The presence of one-half of the total number constitutes a quorum. The members receive no pay for their services, but are entitled to out-of-pocket expenses, and the statutes may allow them also payment for loss of time.

In order to facilitate decentralization and economy of working, the Act allows the associations to divide themselves into territorial sections. Of the sixty-three trade associations, all but eighteen have availed themselves of this power, and of these only six extend over the whole Empire. Of the remainder, several are divided into ten or more sections, one has as many as thirty-nine. The organization and powers of the section are determined by the statutes of the association. The model statutes provide for a sectional meeting, which is to elect a sectional board of five members, examine the accounts of the section, and choose delegates to the general meetings. The sectional board is to do the work of the general board for its own district. According to the model statutes, it is to be elected in the same manner as the general board, to which its proceedings are to be reported within three days.

The Act also allows of the appointment of confidential agents, who are nominated by the general meeting or the general board. Their functions are regulated by the statutes of the association. It is intended that they should act for the associations in places for which there is no sectional board, or where it is at some distance away, and do what has to be done in cases where the prompt action of some one on the spot is required. A very large number of these confidential agents exist, upwards of 7700 having been appointed for the trade associations

GERMANY. alone. The qualifications and the terms of appointment of members of the sectional boards and confidential agents are similar to those prescribed for the general board.

(c) *The Tief-bau and Regie-bau.*

The description given above of the constitution of the trade associations applies equally to the *Tief-bau* association, created by the Act of 1887. For the *Regie-bau* some special provisions were required, as it was not possible to entrust extensive powers of self-administration to employers whose membership of the association was only temporary. To each of the building trade associations an insurance institute was accordingly added, which undertakes the insurance of the workmen employed in the *Regie-bau*. This institute is worked as a separate branch of the association, and has statutes of its own, which require the approval of the Insurance Office, like those of the association itself. These statutes provide for the organization of the institute and allow the creation of a special management for it. As a matter of fact, all the associations work their institutes by means of their ordinary machinery, hence there is nothing that requires special description in this place.

(2) *The Sea Insurance.*

The organization of the association created for the sea insurance by the Act of 1887 is on precisely the same lines as that of the trade associations, except that the general meeting may delegate the whole of its functions to a committee. The only point requiring notice is that where a ship is owned by several persons in shares, some one must be appointed to act as owner in all matters which concern the insurance; in the absence of a special appointment, the ship's husband is responsible.

(3) *The Agriculture and Forestry Insurance.*

The organization of this differs in some important particulars from that of the trade insurance. The numbers to be dealt with were very large. At the end of 1895 upwards of 12,289,415 persons, employed in 4,813,572 different establishments, were insured under the Act. The depressed condition of agriculture made it necessary to simplify and cheapen the machinery as much as possible. The great similarity of agricultural operations in all parts of the Empire, and the fact that such differences as existed were mainly due to local conditions, pointed to a territorial basis as the most suitable for the constitution of the associations, while the simpler industrial organization prevailing in the rural industries made it unlikely that the members of the associations

would be able to exercise successfully the large powers of self-management allowed to the trade associations. Hence the Act provided for the Empire being divided among numerous territorial associations, the different States of the Empire being left to take the initiative in settling, after consultation with the persons interested, the number and areas of the associations to be erected in their territories. The final decision on the question of numbers and areas rested with the Federal Council, but the Insurance Office had a right to be heard on the discussion of the proposals made by the States. The number of associations ultimately founded was 48, of which Prussia had 12, Bavaria 8, Wurtemburg 4, Alsace-Lorraine 3, Saxe-Coburg-Gotha 2, leaving one for each of the remaining States of the Empire. The Act provided, in cases where other arrangements were not made by the States as mentioned below, an organization very similar to that of the trade associations, but there were some important differences. The great number of members belonging to the associations made it impossible to accord to them the right of attending the general meeting in person, and therefore this meeting was composed of persons chosen by a body of electors, who were themselves selected by the communal authorities from among the employers in their districts. The powers of the general board might, by a resolution of the general meeting, be entrusted to the local administrative authorities within the district of the association.

The above provisions are only applicable to nine of the smaller States of the Empire, all the others having availed themselves of a power given by the Act which empowered them, within two years of its coming into operation, to pass measures substituting for the organization described above such other arrangements as they might consider suitable, saving only the rights and powers of the general meetings. The particulars of these measures cannot be given, but it may be stated that in Prussia practically the whole administration of the insurance has been handed over to different departments of the Government.

It should be mentioned here that the agricultural associations make a very extensive use of the services of confidential agents, as many as 15,800 having been appointed by the end of 1895.

Financial Organization of the Insurance.

(1) *The Trade Insurance.*

According to the scheme of the Act of 1884, the sums required for the payment of the compensation awarded and the current expenses of administration of the association, were to be raised and levied among its members in such a way that each employer should pay a fair

GERMANY. equivalent to the risk which the association was undertaking on his behalf. Thus in calculating the contributions of the individual employer two factors required to be taken into consideration: the number of workmen employed by him, and the extent of the danger to which they were exposed during their work. It was proposed to effect this by assigning to each establishment attached to the association a number, called a co-efficient of risk (*Gefahrenziffer* or *Beitragsfuss*), which was to correspond to the burden per unit of wages paid, which, in consequence of the accidents occurring in it, the establishment was likely to lay upon the association. The contribution due from the employer to the association would then be proportional to the number obtained by multiplying the total amount of wages paid in the establishment belonging to him by its co-efficient of risk.

The Act provided that for each association a table of co-efficients was to be drawn up either by the general meeting, or by a committee of members or the general board as its delegates. For its original settlement and for every subsequent alteration the approval of the Insurance Office was required. The table was to be revised every five years or oftener by the general meeting, the intention being that eventually it should accurately correspond to the risks of the different establishments attached to the association, as shown by the statistics of frequency and severity of accidents. The first revision took place at the beginning of 1889, when forty-two associations desired to make changes in their tables. In most cases the Insurance Office, in sanctioning the alterations, stipulated that the tables should come up for revision again at the end of a shorter period than five years, and that such a provision was required appears by the fact that fourteen associations altered their tables in 1890, four in 1891, eight in 1892, and thirty-four in 1893.

The tables of risks of the different associations naturally differ very considerably, but they must agree in dividing the establishments into classes according to the elements of danger attending different kinds of work. Thus trades in which steam-engines are used will generally bear a higher co-efficient than those in which hand-power alone is employed. Within the limits of the classes, subdivision is allowed according to the greater or less extent of the danger. Thus a business only using one small steam-engine, within range of which few of the workmen need come, will be rated lower than a business of the same kind with a shop full of engines. Regard will also be had to the extent to which in the establishment in question the general rules formed for the prevention of accidents are complied with, but it is not permitted to rate a business higher on account of neglect in

complying with special safety regulations. Such neglect is punished, if at all, in another way, as explained below (p. 51).

In some associations a slightly different process to that described above has been adopted. To each class of workmen a different co-efficient of risk is assigned, and the co-efficient of the whole establishment depends upon the number of workmen of the different classes employed.

The following tables show the classification of risks adopted by the Printing Trades Association. It is one of the simplest, most of the others being far more complicated :—

I.—General Table.

Class of Risk.	Co-efficient of Risk.			
	a. Normal Danger.	*b.* Serious Danger.	*c.* Very Serious Danger.	*d.* Exceptional Danger.
I.	1·00	1·10	1·20	1·30
II.	1·50	1·60	1·70	1·80

II.—Classification of Different Businesses according to Risks.

	Class of Risks.
Printing works—	
1. Without motive power—	
Hand presses	I. *a.*
Platen presses	I. *b.*
Cylinder presses	I. *c.*
Quick presses	I. *d.*
2. With motive power—	
Platen and quick presses	II. *a.*
Machines with several cylinders, and rotary machines ...	II. *b.*
Process-block making	II. *a.*
Electrotyping	II. *b.*
Wood engraving—	
Without motive power	I. *a.*
With motive power	II. *c.*
Collotype printing	I. *a.*
Music engraving	I. *a.*
Type founding—	
Without motive power	I. *a.*
With motive power	II. *a.*
Punch cutting	I. *a.*
Copper-plate engraving	I. *a.*
Stereotyping—	
Without motive power	I. *c.*
With motive power	II. *a.*
Wood-letter cutting	I. *a.*
Manufacture of brass rules—	
By hand	I. *c.*
By steam	II. *b.*
Pressing	II. *d.*

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The work of assigning to the individual establishments their proper co-efficients of risk is carried out by the officers of the association in the manner provided by the statutes. The employer, if dissatisfied with their decision, may appeal within a fortnight to the Insurance Office.

The method by which the annual budget of the associations is made up and balanced must next be explained. The compensation due to persons injured, or their relatives, is paid as it falls due by the post-office. Thus the State, through the post-office, guarantees its payment, and advances the sums of money required. The accounts of the associations are made up yearly, and the necessary amount levied upon the members in a single payment.

Within eight weeks after the conclusion of the financial year the postal authorities forward to the association a statement of the payments made on its behalf during the year. The sum of these, together with the expenses of administration and the sum, if any, to be placed to the reserve fund, gives the total sum to be raised.

The members of the association on their side, within six weeks of the end of the financial year, forward a statement showing the number of insured workmen employed during the year, the total amount of wages paid, and the co-efficients of risk at which their establishments are rated. Only one-third of the excess above 1200 marks of the yearly earnings of individuals is taken into account. In default of such a statement one is drawn up by the confidential agents. Care is taken in this connection to avoid all unnecessary inquiry into the business of the employer, consistently with retaining the power of verifying his statements. Thus he is not compelled to give the names or wages of individual workmen, and in practice, if it is necessary to examine his books, he can have it done by some one from a distance who is not a trade rival.

As mentioned above, the association does not levy from the employers in each year the capital values of the pensions awarded during the year, but only their annual amount and the expenses of management. This would obviously make the burden of the insurance fall very lightly upon the first years of the operation of the law, as the amount of existing pensions would go on steadily increasing for a considerable period. In order to equalize matters, and to render the associations financially more stable, the Act provided for the creation of a reserve fund by means of levies upon the employers of the following amounts :—

1st year, 300 per cent. of the amount required for payment of compensation during the year.
2nd ,, 200 ,, of the simila: amount for the 2nd year.
3rd ,, 150 ,, ,, ,, 3rd ,,

4th year,	100	per cent.	of the	similar amount	of the 4th year.
5th "	80	"	"	"	5th "
6th "	60	"	"	"	6th "
7th "	50	"	"	"	7th "
8th "	40	"	"	"	8th "
9th "	30	"	"	"	9th "
10th "	20	"	"	"	10th "
11th "	10	"	"	"	11th "

The interest upon the reserve fund was to accumulate until it equalled twice the yearly expenditure of all kinds falling upon the association; afterwards, so long as the fund did not fall below this level, the interest might go in aid of revenue. The reserve fund might be increased beyond this amount by resolution of the general meeting of the association. It might also be drawn upon in cases of special necessity. In both cases the consent of the Insurance Office was required.

It has already been stated that the contribution to be levied on the employer is proportional to the figure obtained by multiplying the total amount of wages paid in his establishment by the co-efficient of risk assigned to it. In associations divided into sections a further complication may arise. The expenses of administration of the section may be thrown upon it, and it may also have to bear an amount not exceeding fifty per cent. of the compensation payable during the year in respect of accidents in businesses belonging to it, and of the corresponding amount to be placed to the reserve fund. The limit of fifty per cent. does not apply to the mining association, which has decided that the burden falling upon each section is to be borne by the association generally only so far as it exceeds the average normal amount. Any reduction below this amount benefits the section exclusively. Twenty-six of the associations with sections have availed themselves of this power, but only seven put as much as fifty per cent. to the charge of the sections.

The assessment of the contribution of the individual employer is made by the general board, and payment is due as soon as it is communicated to him. He may dispute it before the board if he is dissatisfied, and he has also a limited right of appeal to the Insurance Office, but only on the ground of some error in calculation, or of some mistake as to the amount of wages paid, or the co-efficient of risk of the establishment. But the employer cannot appeal on either of the last two grounds if he has made default in supplying the necessary information to the association. The right of appeal seems restricted, but in reality it covers all the ground. The other items upon which the calculation is based are such as concern the members of the association generally, and the proper place to dispute them is the general meeting of the association

GERMANY. or section when the yearly accounts are presented for consideration and approval.

The following extremely condensed abstract of the statement of his contribution, furnished to an employer by an association in which 10 per cent. of the compensation is thrown upon the section, will show better than any explanation how the amounts are arrived at :—

	Marks.
" 1. Amounts paid by post-office during year, 24,000 marks, 300 per cent. of which, or 72,000 marks, is to be levied for reserve fund, making 96,000 marks in all. Of this, the amount to be borne by the association is 90 per cent., or	86,400
2. Premiums upon policies of insurance subsisting at commencement of Act and taken over by association	17,600
3. Expenses of administration	44,500
Total to be raised among members of association ...	148,500

Total wages paid by members 54,000,000 marks.

The sum of the products of the amount of wages paid in each establishment by its co-efficient of risk gives 2,970,000,000 units of contribution; thus each unit of contribution bears $\frac{148500}{2970000000}$ or ·00005 marks.

Your section has to bear in addition—

1. 10 per cent. of compensation incurred in section, amounting to 2,700 marks, or	270
2. 300 per cent. of this for reserve fund	810
3. Expenses of administration of section	3,870
Total to be raised among members of section	4,950

Total wages paid in section amount to 5,500,000 marks, corresponding to 330,000,000 units of contribution, hence each unit bears $\frac{4950}{330000000}$ or ·000015 marks.

Thus the total to be raised per unit of contribution is—

For the association	·000050
For the section	·000015
	·000065

Total wages paid in your establishment amount to 25,600 marks, and the co-efficient of risk is 75, thus the number of units of contribution is 25,600 × 75 = 1,920,000.

Your share is therefore 1,920,000 × ·000065 marks = 124 marks 80 pfg."

The financial organization described above was not adapted to the building concerns brought within the operation of the insurance system by the law of July 11, 1887. Accordingly a new method was proposed for each of the two classes of insurance established by that Act.

In the Tief-bau, the workmen are employed on jobs which are always temporary in their nature, although they may be of considerable size and importance. A system under which only the actual disbursements

made during the year are levied from the employer would therefore be unjust, as the concerns in respect of which the charges are assessed would come to an end when the work was finished, and leave the association burdened with pensions which might last for many years. The system was therefore adopted of raising forthwith the capital value of the pensions. This, of course, involved complicated actuarial calculations, which have caused considerable discussion between the Insurance Office and the Tief-bau association, and the tables adopted will require revision as more extensive statistical results are accumulated. The method of arriving at the amounts to be levied each year was altered in 1894, and is now as follows. At the end of each year the capital value of the pensions then existing is calculated actuarially; to this is added the amount of compensation actually paid during the year and the expenses of administration, and from the total is subtracted the value of the capital in hand; the difference gives the amount to be levied, which is collected in quarterly instalments.

The reserve fund is also constituted in a different manner. Five per cent. is to be added each year to the assessments of the employers until the capital and accumulated interest amount to a sum equal to the annual amount levied. The other provisions on the subject are the same as in the trade insurance.

For the Regie-bau an entirely different financial organization was provided. As most of the works to be dealt with are of temporary duration, it would be useless to compel the persons undertaking them to become members of an association which they would leave again immediately. In many cases also the amounts to be collected would hardly repay the costs of collection. Therefore a system was adopted by which the expenses of the insurance of small enterprises are paid by the communes, while persons undertaking larger jobs pay premiums calculated according to the class and number of the workmen employed. The line of demarkation is drawn between works which require less and those that require more than six days' work, defined as the work of one man for six days, or of six men for one day. For the first class the organization is simple. At the end of the year the amount paid in compensation is calculated, and a sum of eighty marks per accident compensated is added to represent the cost of administration; the total thus arrived at is divided among the communes within the area of the institute according to their population. The communes are treated much as if they were the employers of the workmen insured, and have similar rights of appeal against their assessment. They are allowed to group themselves together and pool their liabilities, and the Government of the State to which they belong may compel them to do so.

GERMANY. The legislatures of the different States, or the communes themselves, may also provide for the sums required to pay the assessment being levied by a tax on land or buildings.

In the case of jobs requiring more than six days' work, the employer must send in a statement every month showing the names of the workmen employed, the character of the work they are engaged in, and the amount of the wages received by them. Each institute has drawn up a table of premiums for the different classes of workmen according to the danger of their occupations. Their premiums are expressed in percentages of wages earned, and average about 3 per cent. They are subject to revision every three years. From the statement furnished by the employer and the table of premiums the amount to be paid by the employer for the month's work is calculated in the same manner as in the trade insurance, a contribution towards the reserve fund being included, and forthwith levied and raised in the usual manner and subject to the usual right of appeal. Provision is made for public bodies, and other persons more or less regularly engaged in carrying on work covered by the law, being assessed on the basis of the average amount spent by them in wages, thus avoiding the necessity for elaborate monthly returns.

The insurance institute attached to each building association has a separate budget of its own, although the association is responsible for its liabilities. The intention of the Act was that the institutes should be as far as possible self-supporting, and accordingly they are charged with their proper proportion of the association's expenses.

(2) *The Sea Insurance.*

Here also the organization is simpler than in the trade insurance. For each ship a calculation is made of the wages necessary to provide it with an efficient crew, and this estimate is taken instead of the actual wages paid. The assessment is made by the association, which may increase the amount of the contributions payable, on account of special danger arising from the voyage, or the nature of the cargo, or where an excessive number of accidents has occurred on ships belonging to the same owner; no assessment is made in respect of a period during which the ship is laid up. The usual provisions are made for appeals and for revision of the assessment. For the other businesses grouped with the sea insurance, the association was empowered to draw up a table of risks, if it should think fit; but this has not been done, and the contributions are calculated simply according to the amount of wages paid.

(3) *The Agriculture and Forestry Insurance.*

Here the law allows a great scope for variety in the methods of raising the necessary funds. The legislatures of the different States may prescribe what system they please. If they do not do so, the Act provides four different methods, any one of which may, subject to suitable restrictions, be adopted.

In these the contributions are based—

(1) Upon the value of the work.
(2) Upon the value of the work and the co-efficient of risk.
(3) Upon the amount of the direct taxes paid.
(4) Upon the amount of the direct taxes paid and the co-efficient of risk.

The third and fourth methods can only be adopted by associations in which the employers are entitled as of right to share in the benefits of the insurance.

The value of the work is based, not upon the wages actually paid in each successive year, but upon an estimate made once for all for each concern of the cost of the labour required to carry it on. This estimate is subject to revision if changes take place in the character of the work. In the Hanover association the assessment is simply based upon the acreage of the farms, market gardens, woods, etc., each kind having a different rate. The contributions payable in respect of foremen are based upon actual earnings as in the trade insurance. Where the risk is trifling, the employers may be exempted altogether from contribution, though the workmen employed by them remain entitled to the benefit of the insurance. Of the forty-eight agricultural associations, three have adopted the first system, fourteen the second, two the third, and twenty-nine the last.

The formation of a reserve fund is not insisted upon by the Act, but it may be prescribed by the legislatures of the States or by the statutes of the associations. In nineteen only has such a fund been constituted.

The Imperial Insurance Office.

According to the Act of 1884, this Office was to have its seat at Berlin, and be managed by a board consisting of at least eleven members, three being permanent and eight temporary. The permanent members are appointed by the Emperor, on the recommendation of the Federal Council, and consist of a president and at least two others. Of the temporary members, who hold office for four years, four are appointed by the Federal Council from among its members, two are representatives of the trade associations, and the remaining two are

GERMANY. representatives of the workmen employed under them. The law of 1885 added two other members to represent the farmers and the agricultural labourers respectively. Two more were added by the law of 1887 as representatives of the shipowners and seamen. As a matter of fact, the composition of the board is far more elaborate than would appear from the above statement. Besides its connection with the accident insurance, it has enormous quantities of work thrown upon it in relation to the sickness and old age insurance, and it has been found necessary to strengthen the permanent element. At present, instead of there being only two permanent members of the board besides the president, there are thirty-five councillors, thirteen of the higher and twenty-two of the lower grade, two permanent directors, and a secretary. The elected members would thus be entirely swamped did not the law provide for the appointment of as many substitutes for them as might be required, thus enabling them always to be present in full strength at the sittings of the board. The Act of 1884 also provided that disputes as to the property of associations in case of alterations in their constitution, and appeals from the boards of arbitration, were to be heard by the board sitting as a Court with two judicial assessors appointed by the Chancellor. As many as thirty judges have been appointed to take part in this work, and the similar work requiring to be done under the sickness and old age insurance. The elected members of the board are chosen respectively by the general boards of the various associations, and by the delegates of the insured workmen, if they exist, voting power being assigned according to the magnitude of the interests represented. They must be members of the electing bodies.

A great deal of the business to be transacted is detail office work, and is accordingly dealt with by small committees. More important matters come before the board itself. The meetings are not open to the public, except when the board is sitting as a Court. For meetings at which the attendance of the judicial assessors is required, or at which the business to be transacted includes the granting of exemption from insurance to individual establishments on account of their freedom from danger, the hearing of appeals from the imposition of penalties by the associations, the approval of changes in their constitution or of regulations for the prevention of accidents, the dissolution of insolvent associations, or the formation of boards of arbitration, the presence of at least five members is necessary, including the president or his deputy, and at least one representative of the associations and of the workmen respectively.

When the board is sitting as a Court the parties interested have the

right of audience; in other cases the decision of the board is usually taken upon the written materials before it. The expenses of the Office are borne by the Empire.

The Act provided that the different States of the Empire might, if they thought fit, create Insurance Offices of their own, which were to discharge the functions of the Imperial Office so far as concerned the workmen employed by the State in question and all associations whose district was entirely within its limits. Bavaria, Saxony, Wurtemberg, Baden, the two Mecklenburgs, and Reuss Greiz, have all availed themselves of this power. Bavaria and Saxony have each two, and Wurtemberg one of the associations under their charge; the others confine themselves to the establishments of the State. The composition of these offices was to be similar to that of the Imperial Office, details being left to be settled by the Governments of the different States.

Delegates of the Insured Workmen.

For each trade association, and for each section of a trade association, delegates of the workmen insured in the association are chosen, their number being equal to that of the board of the association or section. They are chosen by the boards of such of the State sick clubs as have not less than ten of their members insured under the association or section in question. The representatives of the employers upon the committees of the sick clubs take no part in the election. The persons elected must be working in one of the establishments attached to the association or section, and must be members of one of the electing sick clubs. Deputies are elected at the same time. The delegates are appointed for four years, retiring by halves every two years, but are eligible for re-election. They receive payment from the association or section for out-of-pocket expenses and loss of time, but otherwise their service is gratuitous. The duties of these delegates consist in electing the workmen's representatives on the boards of arbitration and on the board of the Insurance Office, and in assisting at the preparation of regulations for the prevention of accidents. They must not be confused with the persons who take part in the inquiries into accidents: these are chosen by the committee of the sick club to which the injured person belonged.

In the sea insurance these delegates are not appointed. The sick clubs elect directly the workmen's representatives for the Insurance Office and the boards of arbitration, and these representatives assist at the preparation of safety regulations.

In the agriculture and forestry insurance also, no delegates are

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GERMANY. appointed. The members of the boards of arbitration are elected by the sick clubs if there are any; if there are none, by the communes interested. The workmen take no part in the preparation of safety regulations. The representatives of the workmen in the Insurance Office are nominated by the Federal Council.

Prevention of Accidents.

The authors of the German insurance law foresaw that it would be objected to their system, that under it industrial peace would be purchased at too high a price, and that it would give rise to evils and sufferings greater than those it would remedy. It would be urged that the employer, relieved from personal liability for his own negligence, would relax his vigilance and would find it no longer his interest to take the precautions against accidents which he would otherwise take; and that the workman also, knowing that whatever happened to him, he was safe from starvation, while the future of his wife and children was provided for, would be rendered reckless, and ready to take risks which he might at the cost of a little extra trouble avoid. Accordingly they met these arguments by taking care that under their proposed system the employers should be constrained to take proper precautions against accidents, and the workmen punished by fines for their carelessness.

The provisions of the Act of 1884 upon this subject fall under two heads: those relating to the regulations to be adopted for preventing accidents, and those relating to the system of inspection by which the observance of those regulations was to be enforced.

1. The Act conferred upon the associations the power of making regulations for the prevention of accidents applicable either over the whole or part of their areas, or else only to particular branches of industry or to particular kinds of work. These regulations may deal with the general arrangement of the establishments, or with the precautions to be taken for the safety of workmen engaged in particular kinds of work. They must be general in form; the association is not permitted to make regulations applicable only to individual establishments.

The initiative in the framing of the regulations is left to the associations; the Insurance Office can invite them to submit drafts for its approval, but cannot compel them to do so. As a matter of fact, they have largely availed themselves of this power, upwards of fifty-one of the trade associations having adopted regulations by the end of 1892. In some cases these regulations are very detailed and minute, but a good deal has been done to co-ordinate the provisions adopted by

different associations and to produce as far as possible uniformity between them. *GERMANY.*

In the preparation of the regulations the workmen take a very important part. The draft proposals have to be considered at a joint meeting of the members of the board of the association or section, and of the corresponding delegates of the insured workmen. The two classes are present in equal numbers, and the only advantage the employers have is the casting vote of the chairman of the association or section who presides at the meeting. The vote is taken by a simple majority, but the rights of the minority are still further safeguarded by the rules of the Insurance Office, which requires the votes and views of all the persons taking part in the discussion to be laid before it, to assist it in the task of deciding whether the regulations are to be approved or not.

Provision is made for enforcing the observance of these regulations both by employers and employed. An employer who does not conform may find his establishment charged with a higher co-efficient or risk, or, if it already stands at the highest figure allowed by the tables of risk used in the association, his contributions may be increased to an amount not exceeding twice the normal amount. The provision is not intended to be a penal one; it is simply based upon the principle that the employer by his non-compliance imposes a heavier risk upon his association, and therefore ought to be charged with a larger premium. The higher rate is imposed by the board of the association subject to an appeal to the Insurance Office. If the condition of the establishment causes its inspection to be more than ordinarily expensive, the extra cost so incurred may be charged to the employer in the same manner, and subject to the same right of appeal.

Transgression on the part of a workman is punished by a fine, which may not exceed six marks. This fine is imposed by the board of the sick club attached to the establishment in which the workman is employed, or, if there is no sick club, by the police authority of the place. The fine goes into the coffers of the sick club to which the workman belongs, which is not necessarily the same as that which imposes the fine. An appeal lies in all cases to the proper tribunal for hearing appeals from police magistrates.

2. The associations have power to appoint inspectors to supervise the general working of the Acts. In some cases this is done by the confidential agents of the association, but these officials are already for the most part fully occupied; they can hardly be expected to undertake gratuitously the burden of inspection, and it is becoming more and more common to appoint special paid inspectors. The Act contains some provisions intended to protect the employer

GERMANY. from having to admit to his works any person who might be a trade rival or otherwise likely to get information as to matters which it is desired to keep secret. The employer may, without giving reasons, object to the inspector appointed to visit his works and suggest the names of suitable persons to replace him. The association is not bound to accept one of these nominees, and if the matter cannot be settled by agreement, the Insurance Office must decide. Further all inspectors are bound to secrecy as to what they may see in the works they visit, and any breach of confidence renders them liable to heavy penalties.

Before the Act came into operation a system of factory inspection by Government officials was already in existence. Some friction naturally took place between the old system and the new, as their functions to a great extent overlapped. The regulations of the association sometimes contradicted those laid down by the Government inspectors; sometimes the latter would find in their districts two associations adopting different regulations with regard to precisely the same matter. Most of these difficulties have been got over in practice, and it seems now to be generally thought that the enforcement of safety regulations is best left to the inspectors of the associations, thus giving the factory inspectors more time for the discharge of their other duties, such as supervising the employment of women and children, the hours of labour, and the hygienic condition of the factories.

Without any doubt the establishment of the insurance system has given the employers a strong inducement to take care that all means are used and precautions adopted for the prevention of accidents, provided those means and precautions are not too expensive. This last qualification is frequently overlooked, and the argument from self-interest pushed too far, for if it is cheaper to pay the assessment than prevent the accident, it is not to the employer's pecuniary interest to prevent it. Within due limits however the interest of the employers has been to prevent the accidents. A very important part of the duty of the associations has been the making and enforcing regulations for that purpose. The experience accumulated has been freely used to improve these regulations, and vigorous use has been made of the power of increased rating to induce recalcitrant employers to adopt them. Besides this the inspectors of the association have been able to do what the Government factory inspectors cannot do, that is, to bring the experience and resource of an expert in the trade to deal with the special difficulties of accident prevention in that trade. In other ways the associations have often been able to exercise an influence to which the individual employer could never attain. This appears very clearly in the report of 1890 of the board of a wood-working association. "We

have to report," says the board, "a very remarkable success obtained by our direct influence on the makers of wood-working machines. We have, after a great deal of trouble, induced them to alter as we desired their antiquated and unpractical appliances for protection, and soon they will not deliver any more machines without proper safety appliances. In fact, owing to the strenuous efforts we have made all round, the severity of accidents from machines has been greatly diminished; some characteristic kinds of severe injuries, which were formerly very common, are now hardly to be met with."

In the sea insurance similar measures have been adopted, but no power is given to inflict fines on the workmen. The captains of ships are made directly responsible for the taking of proper precautions to prevent accidents on board, and are liable to be fined if they are negligent in so doing.

In the agriculture and forestry insurance regulations applicable to the employers can alone be adopted, and the workmen take no part in their preparation. As a matter of fact the provisions of the Act on this subject have remained almost a dead letter, as the agricultural associations have shown very little inclination to make use of their powers.

In order not to unduly relieve the employer and others from personal liability, the Acts provide that any person aggrieved may recover the difference between the damages to which he would have been entitled under the general law, and the compensation which he receives under the insurance, from the employer, or any of his agents, managers, or foremen, who have been convicted of deliberately causing the accident. The sick clubs are also entitled to be indemnified by these persons in the above circumstances, and also if the injury is due to any neglect on their part in the execution of their duties. If owing to the death of the culpable person or otherwise, a conviction cannot be obtained, the indemnity spoken of above may still be claimed. The associations are also entitled to all the benefits of any rights of action which the injured person may have against third persons unconnected with the establishment in which he is employed, either under the common law or under the Act of June 7, 1871.

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The general Austrian law of liability is contained in sections 1010, 1161, 1315 of the Civil Code, according to which the employer is responsible only for his own wrongful acts, and not for those of his

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servants, unless he has been negligent in their selection. A different rule was enacted in the case of railways by the law of March 5, 1869, according to which in any case of injury negligence on the part of the employer was presumed, unless it were proved to be due to *force majeure*, or the negligence of the injured person himself. This Act only applied to persons engaged in the active working of the traffic.

In a factory regulation bill introduced on December 16, 1880, a clause was introduced making the employer liable for injuries caused by the default of his managers and foremen in complying with the regulations prescribed by the bill, or otherwise due to their negligence. This however was not persevered with, as by this time opinion had turned in the direction of a system of universal insurance on the German lines. A bill with that object was introduced on December 4, 1883, in the Lower House, and, after prolonged discussion, became law on December 28, 1887. Before very long it became clear that the scope of the insurance created by this Act was too small, and in 1892 steps were taken by the Government which resulted in the passing of the extending and amending Act of July 20, 1894.

The system established by the Act of 1887 was in many respects similar to the German, but differed principally in the much smaller amount of self-government allowed to the insurance associations. These last were formed on a territorial basis, instead of the different establishments of the same industry being grouped together. The financial arrangements were also different, as the contributions levied from the employers had to include the capital value of the pensions awarded, instead of only the year's outgoings. The main provisions of the two Acts are summarized below under the usual headings.

Persons Insured.

The Act of 1887 applies to all workmen and foremen employed in—

(1) Factories and smelting works, mines, except those of the so-called "reserved minerals," ship-building yards, quarries, and pits.

Factories have been defined, by a ministerial ordinance of April 3, 1888, as including "all industrial concerns, in which is carried on the production or preparation of industrial products, in enclosed places, by the labour of a number, generally twenty or more, of industrial workers, employed away from their own homes." They are distinguished from workshops by the fact that in them the employer, while exercising superintendence over the work, does not ordinarily take part in it himself.

The "reserved minerals" were intended to be provided for by a

special Act, which was passed on July 28, 1889. Practically all the important minerals are included in the term.

(2) The building trades, and those subsidiary to building operations.

The construction of roads, canals, and bridges is included among the building trades. In building operations proper the builder is treated as the employer, in the subsidiary trades the contractor for the work, if there is one, if not, the owner of the premises. The Act does not apply to persons doing casual repairs to buildings but not regularly working at some building trade, or to persons engaged in the erection of one-storied dwelling-houses or business premises in the country, or of other buildings intended for agricultural purposes, provided that the only persons engaged in the work are the owner of the building, the members of his household, and other persons dwelling in the same place and not builders by trade.

(3) Trades in which explosives are manufactured or used.

(4) Establishments connected with trade, forestry, or agriculture, in which steam boilers or machinery driven by natural power (wind, water, steam, gas, hot air, electricity, etc.), or worked by animals, are employed.

If the machinery does not belong to the establishment, and is only casually employed in it, the insurance is to be effected not by the owner of the establishment, but by the owner of the machinery, even though the workmen are not employed by him. But if the machinery is regularly used at periodical intervals, as in the case of agricultural implements during the harvest season, the obligation to insure falls upon the establishment.

In enterprises connected with forestry or agriculture, the obligation to insure extends only to such workmen and foremen as are exposed to the danger connected with the use of the machinery belonging to them.

Questions as to what is machinery within the meaning of the Act are determined by the Minister of the Interior.

The Act does not apply to shipping businesses which are subject to the sea laws. It only applies to the railway, tramway, and inland navigation industries, provided they are integral parts of, and exist merely for the purposes of, some other business which is within the Act. But railway servants are entitled to the benefits of the insurance if they are not within the provisions of the Employers' Liability Act of March 5, 1869, that is to say, if they are not actually employed in working the traffic. This last restriction left the law relating to persons employed on railways in a very unsatisfactory condition, for the provisions of the

AUSTRIA. Employers' Liability Act, which further only applies to railways worked by steam, and not to electrical lines or tramways, are much less beneficial to the workmen than the insurance law. This state of things was remedied by the Act of 1894, which applies to—

(1) All railway undertakings, whatever the motive power employed in them.

(2) All other undertakings which are concerned in the way of business with the carriage of passengers or goods by land, or on rivers and inland waters, the shipping industry being excepted as before. It is necessary that the undertakings should have their head office or a permanent agency in the country, and that the trips run by them should be, at least in part, within the Austrian territory.

In both these cases the obligation to insure extends to persons temporarily on duty abroad or in Hungary, or permanently employed on connecting lines or at frontier stations, unless they are already insured against accident by the law of the other country in question.

(3) Businesses which are concerned with the cleaning of streets and houses (windows, roofs, etc.).

(4) The business of storage and warehousing, including wholesale wood and coal-yards.

(5) The working of permanent theatres, even if they are not open all the year round, including all workmen and foremen employed in them, and the actors themselves.

(6) The trades of stonemasonry and well-sinking, and the erection of iron structures.

(7) The trades of dredging, fire-extinguishing, sewer-cleansing, and chimney-sweeping.

The Act of 1887 made no provision for optional insurance, but under the amending Act of 1894 the employers in businesses to which the obligation to insure applies may insure themselves, their managers, and other persons who are exposed to the perils of the business. Employers also in concerns to which the law does not apply may insure themselves, their managers, foremen, and workmen. If they do so at all, they must insure all foremen and workmen employed by them. Special provision is made for the insurance of members of voluntary fire brigades. This amendment removed what had formerly been a great hardship upon the small employers, especially those engaged in agriculture, who were as much exposed to danger as their labourers, but found their participation in the insurance limited to the receipt and payment of demand notes.

The Minister of the Interior has power to exempt from the insurance obligation establishments which do not involve danger to the workmen; no use appears to have yet been made of this power. He can also extend the provisions of the Act to other concerns which present risk of accident, or are especially liable to fire. There is no limit to the salary which foremen insured under the Act may receive.

Injuries Insured Against.

The insurance extends to all injuries sustained by a workman in the course of his employment. If the accident is caused deliberately by the injured person, his claim to compensation is forfeited, though that of his relatives is not affected. Diseases of occupation are not included in the term "accident."

Scale of Compensation.

As in the German trade insurance law, with the following differences:—

(1) The pensions begin in the fifth week after the accident.

(2) The pensions for total disablement amount to 60 per cent., and those for partial disablement to not exceeding 50 per cent. of the yearly earnings.

(3) The sickness expenses are not payable, nor is there any provision for hospital treatment, as all this is dealt with by the sickness insurance law.

(4) The funeral expenses are allowed according to the custom of the place, but may not exceed twenty-five florins.

(5) The widower of a female worker killed by an accident, if unable to earn his living, has a pension of 20 per cent., unless owing to his own misconduct he was living apart from his wife, and this last restriction applies also to a widow.

(6) Children of a marriage contracted after the date of the accident, or who are themselves conceived after that date, have no claim to compensation.

(7) Children are entitled to compensation for the death of their mother even if the father is still alive.

(8) Each illegitimate child has a pension of 10 per cent.

(9) The pensions in case of death must not together exceed 50 per cent. of the yearly earnings.

The yearly earnings are in all cases taken at three hundred times the average daily wage, which is calculated as in the German law. The excess of the yearly earnings above 1200 florins is not taken into

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account. For apprentices, etc., the pensions are based upon the lowest wages of ordinary workmen in the same trade, but the figure taken must not exceed 300 florins.

The period of five weeks during which no compensation is paid (the so-called *Karenzzeit*) is much too small, for it does not, as in the German system, extend over the whole period during which the injured person is entitled to maintenance under the sickness insurance. This period amounts to twenty weeks, and consequently during sixteen of them the injured person has a claim against both the accident and the sickness insurances. Another objection is that it causes the expenses of an inquiry to be incurred in a great number of comparatively trifling cases.

Assessment of Compensation.

All accidents which cause death or a disability of not less than three days' duration, have to be reported in writing within a week to the Government authority of the district, which, if the accident appears likely to give rise to a claim for compensation, holds an inquiry much as in the German law. Representatives of the insurance association have the right to be present at the inquiry, and it is the duty of the communal authorities to take part in it, so far as it is concerned with the determination of the facts upon which the award is to be based. The expenses are borne by the insurance association.

Special provisions, which need not be detailed here, have been made under the Act of 1894 for the procedure in case of accident occurring outside Austria, or to persons employed on railways or inland navigation.

The compensation is assessed by the association as in Germany, but the procedure differs in various details; most of these divergences are not conducive to the prompt settlement of claims. The Act does not provide for the provisional payment of allowances before the formal award is made, but in some cases this is done by the association. According to the model statutes, the whole of the compensation, except the pensions of ascendants and those granted to the injured persons themselves for permanent disablement, may be assessed by the managing committee of the board.

The award is subject to an appeal to a board of arbitration consisting of a president and four assessors.

The president is a member of the judicial body appointed by the Minister of Justice. Two of the assessors are appointed by the Minister of the Interior, and must be persons of technical knowledge. A third assessor is appointed by the employers, while the fourth is

elected by the insured workmen at the same time as the representatives of the workmen on the board of the association, and holds office for the same period. None of the members of the board of arbitration may be on the board of the association, or in its employ. For each member a deputy is appointed in the same manner and subject to the same conditions as the member himself. They are entitled to be paid their expenses, and the working-men assessors also receive an allowance for loss of time. The proceedings before the boards are public, but their decisions are taken in private. Appeals to them must be brought within one year of the decision complained of, and there is no further appeal. It is an unsatisfactory provision of the Austrian law that there is nothing above the boards of arbitration corresponding to the Insurance Office in Germany. Their decisions, which have been very numerous, frequently differ from one another in matters of principle, especially as to the calculation of the annual earnings and the percentage of disability. One board only is appointed for each association, which also pays its expenses and those of proceedings before it.

The compensation must be awarded in the form of pensions. Except in the case of pensioners permanently resident out of Austria, the compensation may be paid, wholly or partially, in a lump sum only with the consent of the pensioner and the commune liable to maintain him under the poor law. The Brünn association is in the habit of giving persons whose pensions are small the option of payment in a lump sum, but in many cases they prefer to remain as they were.

The Act directs that the burial expenses shall be paid within a week after the award, and the pensions monthly in advance. In practice, all payments, other than pensions of a permanent character, are made by all the associations except Salzburg through the medium of the sick clubs, which in return receive a contribution from the accident insurance associations towards their working expenses. In all other cases the machinery of the post-office savings banks is used, documents equivalent to withdrawal orders being sent to the pensioners. Only in the case of widows and ascendants is any outside attestation required that the right to the pension is still subsisting. The post-office does not advance the money required as in Germany, and the associations have to pay for the services it renders them.

The pensions granted may be revised at any time, either upon the application of the pensioner or at the instance of the association itself. An appeal lies from any such revision to the board of arbitration. An increase in a pension operates from the date upon which it is claimed, a decrease only from the date on which it is notified to the pensioner.

AUSTRIA. If a person in receipt of a pension for total disablement gets some suitable employment, his pension may be reduced or wholly suspended according to the amount earned by him. If his new wages amount to 80 per cent. of those upon which his pension is based, the new employer has a right to claim from the association one-half of the amount thus taken away from the pensioner. In reliance upon this provision pensions have been in many cases refused to persons who have been taken on again by their employers at the old rate of wages.

Period of Limitation.

This is one year from the date of the accident, unless after an award of compensation the injured person dies, when his relatives have a year from the date of the death within which to put in their claim.

Alienation of Compensation.

This is forbidden. Where the same accident gives rise to claims against both the accident and the sickness insurance, the sick club has a right, under s. 65 of the Sickness Insurance Act, to be indemnified by the accident insurance.

Contracting Out.

This is forbidden.

Organization of the Insurance.

In place of the trade associations of Germany, the insurance is worked by associations formed upon a territorial basis, the whole kingdom being divided into districts, seven in number, corresponding to the political divisions of the country. The following list gives the head offices of the associations, with the territory belonging to them :—

1. Prague for Bohemia.
2. Vienna ,, Lower Austria.
3. Salzburg ,, Upper Austria, Salzburg, Tirol, and Vorarlberg.
4. Graz ,, Styria and Carinthia.
5. Brünn ,, Moravia and Silesia.
6. Lemberg ,, Galicia and the Bukowina.
7. Trieste ,, the town and district of Trieste, Görz and Gradisca, Carniola and Dalmatia.

The associations differ very much in point of size and importance, that of Prague insuring nearly ten times as many as Trieste.

Power is reserved for the employers in particular branches of industry to withdraw themselves with the consent of the Minister of the Interior from the territorial associations, provided they can do so

without impairing the financial stability of the association they leave, and can form a stable association by themselves, giving benefits equal to those secured by the general law. This provision appears to have been put in force only in the case of railways, which have formed themselves into a single association extending all over the kingdom. Further if in any industrial establishment there exists at the commencement of the Act an institute which gives the workmen benefits equal to those provided by the law, and to which the employer contributes as much as he would have to pay under the insurance law, he may apply to be excluded from the territorial insurance system; the Minister of the Interior is not to grant this application unless he is satisfied of the financial stability of the institute.

No initiative was left to the employers as to the formation of the associations, but everything was done by the Minister of the Interior, with the assistance of the insurance council, and after consultation with the provincial councils.

The association is a corporation, but no general meeting of its members is ever held. Its management is regulated by statutes, which are drawn upon the lines of a model form, and require to be approved by the Government. The Act does not give an exhaustive account of what the statutes are to contain, but merely provides that they are to lay down regulations relating to the voting powers of the members, the election of the representatives of the employers and the insured workmen, and the periods at which the assessments are to be paid, and that they are to prescribe the necessary forms and notices for the use of the association and its members, and the manner in which payment of the compensation is to be effected.

The business of the association is transacted by a board, consisting normally of eighteen members. One-third of the number consists of persons familiar with the industries of the district, who are nominated by the Minister of the Interior, with the consent of the provincial councils. In practice one of these nominated members is an official high up in the provincial administration, the others are chosen from among the officials of the insurance companies and the great banks, or of establishments depending on the State.

The remaining two-thirds of the board are elected as to one-half by the employers, and as to the other half by the insured workmen. According to the provisions of the model statutes, which have in all cases been adopted almost without alteration, allied trades belonging to the association are grouped together, each group electing one member of each class. The grouping adopted is the following:—(1) agriculture, (2) railways and metal trades, (3) chemical trades, and

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manufacture of food products, (4) mining and building trades, (5) textiles and clothing trades, (6) paper, leather, wood and miscellaneous trades. The persons elected must be themselves electors of the group.

A committee is appointed by the board to conduct the election, which takes place by means of voting papers, each employer having one vote, while all the workmen employed in his establishment form a unit, their vote being given to the candidate who receives the largest amount of support among them. The employers are entrusted with the duty of convoking their workmen, taking their votes, and reporting the result of their choice to the election committee.

The elected members hold office for four years, one-half retiring every two years; retiring members are eligible for re-election. The model statutes provide for the payment to members of the board of their travelling and out-of-pocket expenses, but they do not receive any other remuneration. Service is not compulsory.

The Minister of the Interior has the power of dissolving the board, but must take the proper steps for constituting a new one.

The board chooses every two years from amongst its members a president and a vice-president. It meets once a month, or more often if necessary, a quorum of ten being required. Alterations in the statutes or in the scale of premiums require a two-thirds majority.

The model statutes provide for the appointment of a committee of the board, consisting of the president, vice-president, and one ordinary member of each class, by which most of the routine business of the association is conducted.

The different establishments belonging to an association are classified according to co-efficients of risk much as in the German system. The Government distributes the different kinds of industries into a series of classes, each of which has a larger or smaller range of co-efficients assigned to it. All the associations have to do is to decide to which class the individual establishments belong, and to assign to them their proper co-efficients within the limits allowed by the scale. The following table shows the different classes, as formed at the commencement of the Act, together with the co-efficients assigned to each :—

Class.	Co-efficients.	Class.	Co-efficients.
I.	5–7	VII.	28–34
II.	8–10	VIII.	35–42
III.	11–13	IX.	43–52
IV.	14–17	X.	53–64
V.	18–21	XI.	65–80
VI.	22–27	XII.	81–100

As an instance of the way in which the classification works, may be taken the case of a dynamo factory. This the Government list shows to belong to Class VII., and its co-efficient therefore must be somewhere between 28 and 34. The proper figure has to be fixed by the association, regard being had to the dangers actually present, and the precautions against accident adopted in the particular factory.

The classification was to be revised every five years, on the first occasion earlier if experience showed it to be necessary. The table now in use was issued in July, 1894. It differed from the first by the addition of two new classes, A and B, with co-efficients 1–2 and 3–4 respectively, for establishments where the danger was trifling, and by permitting the same type of industry to be assigned to more than one class, according as the dangers presented by it were equal to, less, or greater than the normal.

The table is probably still not altogether satisfactory. The statistics show that establishments of the same kind differ much as to frequency of accidents in different parts of the kingdom, and in some quarters it is considered that each association should be allowed to form its own scale, instead of there being, as at present, uniformity throughout the country.

From the decision of the association with regard to the rating of an establishment an appeal lies to the administrative authority (*politische Landesbehörde*) of the district, with a further appeal by either side to the Minister of the Interior. The appeal may also be brought by the factory inspector of the district.

The contributions of the employer to the association are calculated, as in Germany, according to the amount paid in wages and the co-efficient of risk. Nine-tenths of the burden is borne by the employers and one-tenth by the workmen. The whole is paid in the first instance by the employers, who are entitled to deduct the workmen's tenth from the wages paid. If the workman receives no money wages, the employer bears the whole burden. No deduction is allowed from the wages of railway servants, the whole expense of the insurance thus falling on the companies.

When the employer insures persons whom he is not bound to insure, he may make with them what agreement he pleases as to the share of the premiums to be borne by them.

The Act contains provisions, as in Germany, for allowing the agents of the associations to inspect under proper restrictions the books of the employers; but a good deal of difficulty has arisen from the fact that the Act nowhere provides that the employers are to keep a record of

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the wages paid, and in numerous cases, especially in agricultural establishments, it is not customary to keep such a record.

One serious difficulty in the administration of the law appears to be the inclination of the employers to avoid payment of their proper contributions, by returning incorrect accounts of the amounts paid by them in wages. It is stated, for instance, that the association for Lower Austria lost in the second quarter of 1895 as much as £2832 owing to false returns being made. In 231 cases in which convictions were obtained, the amount understated during the quarter exceeded 500 florins. Another report states that between April 21 and May 15, 1895, 19 employers in the district of the Vienna association were convicted of making false returns. The aggregate amount thus understated was £29,111, causing a loss to the association of £460.

The method of assessing the contributions does not work at all successfully in the case of the small farming industry. There the use of a threshing machine worked by an ox will involve the payment of twenty to thirty kreuzers, or that of a straw-chopping machine the payment of fifty kreuzers, amounts altogether insufficient to repay the cost of collection. In some cases the provincial councils have solved the difficulty by taking the burden on to their own shoulders.

The employers have the same rights of appeal against the assessment of their contributions that they have against the classification of their establishments. The workmen also can appeal in the same way against the deductions from their wages; particulars of the deductions and the manner in which they are arrived at, must be posted up for the information of the workmen.

Instead of the contributions being levied once a year, as in Germany, they have to be paid at such times as the statutes of the association provide, that is to say, every six months. The machinery of the State is used to collect assessments in arrear.

The contributions levied must be sufficient to cover the capital value of the pensions granted during the year and the amount to be placed to the reserve fund. The amount to be devoted to this purpose is determined by the Minister of the Interior, but the fund is not to exceed 10 per cent. of the capital liabilities of the association. Two-thirds of the fund are to be kept as a special reserve for the purposes of the association itself; the remaining third is to form part of a general reserve fund common to all the associations, which is only to be drawn upon, by the permission of the Minister of the Interior, after the special reserve fund of the association requiring assistance has been exhausted.

The increase in the number of accidents, which was experienced in

Austria as it was in Germany, and which a report issued in 1896 upon the working of the insurance during the years 1890–94 described as startling, has very seriously affected the financial position of the associations. For the first year there was a surplus, but since then the income of the associations has not been sufficient to pay the current outgoings, and carry the prescribed amounts to capital account. For the three years 1892–94 the excesses of expenditure over income were respectively £6000, £46,000, and £82,000. The expenses of the insurance are also very serious, as appears by the following table :—

	1892.	1893.	1894.
	£	£	£
1. Amount paid in compensation	74,000	104,000	141,000
2. Total expenses of insurance	67,000	68,000	83,000
3. 2 as a percentage of 1	90	65	59

The Insurance Council.

It appears from what has already been said that the Minister of the Interior plays a very important part in the administration of the insurance system; he discharges much the same functions as the Insurance Office in Germany. To assist him in his deliberations the Act provided for the creation of an insurance council (*Versicherungs-beirat*), which was to consist of experts (*Fachmänner*), who are acquainted with the technicalities of trade and industry, agriculture and forestry, engineering, and insurance. The composition of this council and its functions were to be settled by the Government, but the Act provided that it was to be consulted upon the following subjects :—

(1) The determination and alteration of the areas of the insurance associations.
(2) The drafting of model statutes.
(3) The drafting of the table of co-efficients of risk.
(4) The sanctioning of expenditure from the general reserve fund.
(5) The settling of the tariff for the first year.
(6) The raising or lowering the tariff of a particular association.
(7) The creation of special associations for particular trades.

The Minister of the Interior appoints the members of the council, who hold office for three years, and are eligible for re-appointment. They receive no pay, but, if resident away from Vienna, are entitled to an allowance for their expenses. The Minister has also the right to appoint extraordinary members of the council, who however have no vote. They are usually experts chosen for the purpose of assisting in

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the discussion of particular subjects, and are in some cases paid for their services.

The council consists at present of eleven members, including six representatives of trade and industry, one of agriculture and forestry, and two each of engineering and insurance.

The results of its working do not seem to have satisfied the expectations of its founders. It has no independent initiative apart from the Minister of the Interior, and does not supply the lack of a strong and well-informed central authority.

Prevention of Accidents.

The inspection of establishments subject to the law is conducted by the Government factory inspectors, as requested by the associations.

Upon the report of the factory inspector, the association can propose special regulations for the prevention of accidents in particular establishments. These regulations are laid before the administrative authority of the district (*politische Behörde erster Instanz*), which must consider them, and, if it thinks proper, adopt them. An appeal lies to the Minister of the Interior against any such regulations. No penalty is imposed by the Act for non-compliance with them.

Great dissatisfaction has been expressed with these conditions, and the associations seem to be unanimous in demanding that they should be themselves entrusted with the power of making safety regulations. The administrative authorities appear to be not very zealous in the matter, and private enterprise has hardly got further than the establishment of a museum of industrial hygiene.

An additional inducement to care on the part of the employers is to be found in the fact that they remain in some cases subject to personal liability. If the injury is caused deliberately, or through gross negligence, by the employer, the insurance association is entitled to be indemnified by him against its consequences. If the employer is unable to manage his business himself, he is responsible in the same way for the acts or defaults of the manager who represents him. To the same extent a company is responsible for the acts of a director or liquidator.

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Under the common law of Norway the employer is responsible only for the consequences of injuries due to his own negligence, or to instructions directly given by him, but this state of things has long since

been modified by statute. A law of September 7, 1854, made the railway companies responsible for the acts of their officials. The mining law of July 14, 1842, gave to a miner disabled by accident the right to medical treatment at the expense of his employer, together with an allowance equal to the amount of his wages during two months, and equal to half that amount during four more months, while under a law of June 15, 1881, all workmen employed in factories are entitled to support for a period of four weeks in case of accident. In the shipping laws also provisions for the maintenance of injured seamen are to be found similar to those contained in the codes of most maritime nations.

In 1885 a Royal Commission was appointed which reported in 1890, and produced a scheme of accident insurance. A bill founded upon their labours was introduced in the Storthing by the Government, and finally, on July 23, 1894, there was passed an Act which came into operation on July 1, 1895, and established a system of universal compulsory insurance.

This Act formed the first chapter of a system of workmen's insurance laws, and some of its provisions will be ineffective until the sickness insurance is organized. It is modelled very much upon the lines of the German system, but is much more bureaucratic in its organization. The whole country and all trades are comprised in one insurance society, which is administered as a branch of the Government. The employers have no voice in the management, and the workmen are equally excluded. The burden of the insurance falls entirely upon the employer. Particulars of the Act follow under the usual heads.

Persons Insured.

These include all workmen employed—

(1) In factories, or in trades and crafts which are conducted on the the factory principle, or in which motive power is used or steam boilers employed.

(2) In mining and allied occupations, such as quarrying, stone-cutting, and the like.

(3) In the ice industry.

(4) In industries in which explosive or easily inflammable substances are produced or regularly used.

(5) In the building, equipment, and repairing of houses, vessels, railways, roads, bridges, harbours, quays, docks, dams, canals, sluices, and the like, sewers, gas and waterworks, or in erecting, fitting up, and removing electric wires and lightning conductors.

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(6) On barriers for arresting driftwood, on timber-rafts, and the working of canals, dams, and sluices in connection therewith, and in the railway and tramway industries.

(7) In the loading and unloading of goods, so far as this is not carried out by the crews of vessels, also in building yards, and in wood-cutting; in storehouses and warehouses, including the transport of goods to and from them.

(8) In diving, and salvage work connected therewith.

(9) In chimney-sweeping, in fire extinguishing, and fire salvage.

Provided in all cases that either the work is being carried on for some person or company in the ordinary course of business, or on account of the State or the communes, or else that the undertaking requires at least thirty working days to carry out, and that during this time not less than ten men are on the average fully employed.

Questions as to whether particular businesses come under these provisions of the Act are determined by the Government authority of the place. Power is reserved to the Crown to grant a dispensation from the obligation to insure, where, owing to special circumstances, no danger of accident exists. It is also dispensed with in the case of workmen employed by the State or the communes, provided benefits equivalent to those provided by the Act are secured to them.

Provision is made in the Act for allowing the voluntary insurance, under regulations to be made by the Crown, of the employers in establishments within the insurance laws, of workmen in industries not within the Act, either in a body or individually, and of the employers in such industries who insure their workmen.

Injuries Insured Against.

If the injury is deliberately caused by the workman he has no claim for compensation.

Scale of Compensation.

As in the German trade insurance, with the following differences :—

(1) The pensions begin in the fifth week after the accident.

(2) No pension is granted if the loss of earning power is less than 5 per cent.

(3) The pensions for total disablement amount to 60 per cent. of the yearly earnings, and must not be less than 50 öre per working day, or 150 kroner a year.

(4) The funeral expenses are fixed at 50 kroner.

(5) The widower of a female worker killed by accident, if unable to support himself, has a pension of 20 per cent.

(6) A widow living apart from her husband, and having no right to support from him, has no claim.

(7) A child which has lost both parents gets a pension of 30 per cent. if they were both insurable.

(8) The children of a marriage contracted after the accident have no claim.

(9) Illegitimate children born before the date of the accident have the same rights as if they were legitimate.

(10) The pensions in case of death must not together exceed 50 per cent. of the yearly earnings.

Unless the injured person is otherwise entitled, during the first four weeks after the accident, to free attendance and nursing, the employer must provide them himself. Until the proposed sickness insurance law comes into operation, the allowance for this purpose is fixed at 50 per cent. of the injured person's earnings. Extraordinary expenses caused by the accident, if not otherwise provided for, are to be borne by the Insurance Office.

Assessment of Compensation.

Accidents occurring in an establishment subject to the provisions of the Act must be reported in writing—if serious, immediately, if otherwise, within four weeks—to the proper inspector. The practice is to require the declaration to be made in all cases not later than eight days after the accident. The inspector proceeds to hold an inquiry with the same objects as in Germany, the expenses being borne by the Insurance Office. The inquiry may be attended by the employer, the officer of the sick club in which the injured person is to be enrolled, and all persons entitled to claim compensation in respect of the accident. The factory inspector of the district is also frequently called in to assist.

On receiving the report of the inquiry, the board of the Insurance Office proceeds to assess the compensation, either provisionally or finally. The award is communicated to the person interested, together with the data upon which it is calculated, and he is also entitled to see the inspector's report. If the assessment does not take place automatically in the manner described, any person entitled may put in a claim within the period of limitation. The inspectors have power to make payments provisionally before the decision of the board can be obtained, and in cases of death the practice is to pay the funeral expenses and make an allowance to the relations as a matter of course.

An appeal may be brought from the assessment within six weeks to

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a board of arbitration, which sits at Christiania, and consists of seven members. Three of them—a lawyer, who is president, a doctor, and an engineer—are appointed by the Crown, and hold office for five years. Deputies are also nominated for each of the three. The remaining four are appointed for three years by the Storthing, two being employers, and two workmen; while one employer and one workman are also nominated in the same way as deputies. All members of the board are entitled to have their expenses paid, and receive remuneration in addition. In difficult cases the board can call in expert assessors. Besides its appellate functions, it is also intended to act as a consultative authority on matters connected with the working of the insurance.

In case of changes intervening in the basis of the compensation, the award may be revised at any time. An increase in the pension operates from the date when it is claimed, a decrease only from the date when the decision is communicated to the pensioner.

The compensation is paid either through the post-office or through the inspectors. Sick allowances are paid weekly, other pensions monthly. Payment is made in Christiania at the Insurance Office, in the provinces by the inspectors. The insurance society may require the sick clubs to continue paying at its expense the sick allowances due to the injured person beyond the fourth week after the accident.

The following provision appears to be peculiar to the Norwegian law. Where a man is receiving a pension on account of lasting disablement, the board of the Insurance Office may at his request pay a sum not exceeding the amount of five years' pension in order to enable him to learn a new trade. If he does so and begins to earn money by it, his pension is to be reduced by one-half of his earnings. Until he begins so to earn money, the sum expended is to be replaced by reducing the pension to three-quarters of its normal amount.

Alienation of the Compensation.

Similar provisions to those in the German law exist as to this.

Period of Limitation.

As in Germany.

Contracting Out.

This is forbidden.

Organization of the Insurance.

All employers are members of one insurance society extending over the whole kingdom. It is managed by a board sitting at Christiania,

the members of which are nominated by the Crown. This board consists of a president and two ordinary members, one of the latter retiring every three years, but being eligible for reappointment, together with the necessary office staff. The presence of two members constitutes a quorum, and deputies are appointed when required. The compensation is paid entirely by the employers, and their contributions are calculated according to wages paid and co-efficient of risk much as in the German law. Provision is made for obtaining from the employers the necessary information as to their establishments and the wages paid by them; but the workmen are insured even if the employers are not in fact paying premiums.

The table of risks was to be settled by the Crown, with the consent of the Storthing. It was to be revised within three years from the commencement of the Act, and every five years afterwards. According to the system adopted, all concerns are ranged under one or other of six classes, as it was thought useless to adopt a more elaborate classification until experience had shown it to be required.

The assignment to the different establishments of their proper co-efficient is effected by the board of the insurance society, subject to an appeal to the board of arbitration. Businesses not included in the tariff are rated by the Government authority of the place. In calculating the amounts to be paid by the employers, the excess in wages paid above 1200 kroner is not taken into account, and the wages of apprentices, etc., are taken at the figure upon which the pensions to which they might become entitled would be calculated. The board is entitled to have the books of the employer examined either by the inspector or by some person specially appointed. Employers neglecting to make returns, or making false returns, are liable to penalties; if the inaccuracies of which they are guilty are such as to reduce the amount they would have had to pay, they will not in general escape with the payment of less than three times the amount they have attempted to save. All fines imposed go into the coffers of the insurance society.

The contributions of the employers are payable quarterly in advance; payments in arrear are treated as privileged debts, and collected by the same machinery as taxes.

Prevention of Accident.

One or more inspectors, as the board of the insurance society may think fit, are appointed for each commune by the communal council (*formand og repraesentanter*). They hold office for three years, their salaries being fixed by the communal councils, which pay one-half of

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the amount, the rest being borne by the insurance society. Their business is to look after the working of the insurance in their district, and act as local representatives of the insurance society. Where any business appears to involve special danger, the board of the insurance society may cause an inquiry as to the means of avoiding or lessening the danger to be held either by the inspector or by some person specially appointed.

If the danger is inevitable, or if the directions given with a view to lessen it are not obeyed, the business can be transferred to a higher class of risk, or if it is already in the highest class, the employer's contributions may be increased, subject to appeal to the board of arbitration, to not more than three times the normal amount.

A right of action for damages is reserved to the injured person against the employer, or any of his managers or foremen, who have been convicted of causing the injury either deliberately or through gross carelessness. Persons unconnected with the establishment in which the action occurs, are left subject to their common law liability.

VII. SWITZERLAND.

In Switzerland, as in other countries under the Roman law, the responsibility of the employer for accidents to his workmen was very limited and needed to be supplemented by legislation. The general law as to the responsibility of the master for the acts of his servants is contained in a clause of the "Code of Obligations" of June 14, 1881, which runs as follows:—

"The master or employer is responsible for damage caused by his workmen or employees in the course of their work, unless he shows that he has taken all necessary precautions to avoid the damage."

The first step in this direction was the Railway and Steamship Act of July 1, 1875. This gave compensation for injuries sustained in the construction of a railway in consequence of some fault on the part of the undertaking. Railway and steamship undertakings were also made liable to pay compensation to persons injured in the course of their working, unless they could prove that the injuries were due to *force majeure*, or solely to the negligence or default of passengers or other persons not connected with the traffic, or to the fault of the injured person. No scale of compensation was laid down, the intention being that in ordinary cases the person injured and those dependant upon him should be merely indemnified against the consequences of his

disablement or death; in cases of gross negligence on the part of the employer, an additional money payment in the nature of exemplary damages might be awarded. The compensation might be given in the form of a pension or in a lump sum. The award might be revised if more serious consequences of the injury developed themselves. Contracting out was forbidden, and the period of limitations fixed at two years.

In the year 1877 a Factory Act was passed. This contained provisions of various sorts relating to work in factories, including some clauses relating to employers' liability, which were expressly stated to be only temporary provisions until a law on the subject should be passed by the legislature. According to these clauses the employer is responsible for any injury caused to a workman or foreman by the negligence of a person in superintendence in the exercise of his superintendence. He is also responsible in cases where he cannot show that the injury was due to *force majeure*, or solely to the negligence of the injured person. If there is contributory negligence on the part of the workman, the amount of compensation is reduced accordingly. The federal council was also empowered to declare particular industries liable to cause disease in the workmen engaged in them, and to extend the employers' liability so as to give compensation for disease so contracted.

This provisional law did not receive by any means a uniform interpretation in the Courts of the different cantons. No maximum was fixed to the compensation which might be awarded, and different judges assessed it in very different ways. In some cases ruinous amounts were given, and the uncertainty of the law caused wide complaints on the part of the employers. This led to the passing of the Employers' Liability Act of June 25, 1881, which is still in force. It was amended by the Act of April 26, 1887, which extended its operation to various industries, such as the building trade, in which the frequency of accidents had forced itself upon public attention, and also made various improvements in its administration.

The provisions of the Acts are analyzed below, and some notes are given as to the results of their operation, and the experience gained in their administration.

Persons entitled to Compensation.

To determine whether a workman is entitled to compensation for injuries under the Acts, it is necessary to consider not so much the character of the work he does as the nature of the business in which he is employed.

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The different classes of workmen within the Acts are—

(1) Workmen in a factory.

The definition of "factory" is the same as in the Factory Act of 1877, and runs as follows:—

A "factory" is "any industrial establishment in which a more or less considerable number of workmen are employed regularly and at the same time, away from their homes, and in an enclosed place (*local fermé*)."

This definition is rather vague, and accordingly the federal council, acting under powers reserved to it in the Factory Act, has laid down the following rules as to the number of workmen necessary to constitute a factory:—

(*a*) Establishments the work in which involves special danger to the health and life of the workmen, or which present the obvious appearance (*type évident*) of factories, are factories, whatever may be the number of men employed.

(*b*) Establishments which use motive power, or employ persons under the age of eighteen, are factories, if five or more workmen are employed in them.

(*c*) Other establishments are not factories unless more than ten workmen are employed in them.

(2) Workmen in establishments in which explosives are manfactured or employed.

(3) Workmen in establishments employing not less than five men on the average belonging to the following trades:—

(*a*) The building trade, including all work subsidiary to it, whether carried on in the shops, in the yards, during transit, or on the building itself.

(*b*) Carriage by land and water, and on rafts, but steam navigation is excluded, and left subject to the law of 1875.

(*c*) The work of erecting and repairing telegraph and telephone wires, erecting and dismounting machinery, and the fitting up of industrial establishments (*installations de nature technique*).

(*d*) The construction of railways, tunnels, bridges, roads, and hydraulic works, the sinking of wells, the driving of headings, works of canalization, and the working of quarries and mines.

It should be mentioned that the duty of determining whether a particular concern falls under one or other of these heads, and so is

within the Act, is laid upon the federal council. The Act of 1881 contemplates the existence of an official list of factories, and the inclusion of an establishment in this list is conclusive evidence against the employer that it is a factory; but its absence from the list is not conclusive against the workman, who may show that the establishment is within the Act, and, if necessary, get a decision of the federal council to that effect.

Compensation for damage caused by disease is given only in the case of trades which the federal council has pronounced liable to cause serious illness. A decision of the council has laid it down that such trades are those that produce or regularly employ certain poisonous substances, such as lead, mercury, arsenic, phosphorus, etc.

The right to compensation extends, not only to workmen actually engaged in the trades enumerated above, but also to those engaged in work subsidiary or accessory to the trades carried on by the establishment in question. A liberal view is taken by the Courts of what should be included in the term subsidiary or accessory work; thus, in a case where a contractor engaged in regulating the course of a stream in an out-of-the-way place had organized kitchens for the use of his workmen, and the cook met with an accident in the course of his work, the contractor was held responsible in damages. It is not clear whether the protection of the Act extends to persons such as clerks in the office attached to a factory, whose work is in no way mechanic's work, and whose duties do not expose them to the dangers attendant upon the use of machinery.

Persons Liable to Pay Compensation.

These are in general the employers, for whose benefit the work is carried on. In trades where sub-contracting is customary this would not be satisfactory, as the sub-contractors who immediately employ the workmen are small men, having less than five hands in their service, and thus not within the law, while even in cases to which it would apply, the financial position of the sub-contractor might render the payment of the compensation precarious. Accordingly it is provided that in trades enumerated under the heading (3) above, the head of the concern, or other principal contractor, as the case may be, is the person liable. The test of liability under this rule is the deriving or not deriving pecuniary profit from the work, thus a private person who has a house built for him by a builder incurs no responsibility. There is, however, one exception to this, for when the State, a district, commune, or corporation carries on works which come under the headings

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(2) and (3) above, without the intervention of a contractor, it is regarded as the employer, provided more than five workmen are employed at a time.

Injuries for which Compensation can be obtained.

Compensation is due for all injuries sustained in the course of the workman's employment unless the employer can prove that they were due to *force majeure*, or to an act, punishable under the criminal law, of some person other than the employer, his agents, managers, foremen, overseers, etc., or to the negligence of the person injured.

The law here is very favourable to the workman, laying as it does the burden of proof upon the employer, and it is made still more favourable by the construction placed by the Courts upon the exceptions in favour of the employer. Thus the defence of *force majeure* is confined to cases where the catastrophe was not merely one which could not be prevented, but was so outside the ordinary run of events that it could not be foreseen. This principle may be illustrated by the case of a workman, employed by the canton of Grisons in clearing the Splügen road of snow, who was overwhelmed by an avalanche; the canton was held liable, because, though the accident could not be prevented, it was one of the foreseen dangers inherent to the work upon which the man was engaged.

The responsibility of the employer for the criminal acts of his agents, foremen, etc., extends only to their acts while the work is going on. If he claims exemption from liability on account of the criminal act of a third person, he must show that the act was criminal in the strict sense of the word, and was not merely one of imprudence or negligence.

The last defence of the employer is that of the workman's own negligence. This has naturally produced much litigation, but its scope has been materially reduced by the Courts. In order to succeed the employer must show that the accident was due solely to the negligence of the workman. If it was due to the combined fault of workman and employer or foreman the employer is liable, though, as explained below, the amount of compensation may be reduced. That the Courts are well disposed to find contributory negligence on the part of the employer appears from a case where the employer was held liable, because he or his foreman looked on, without interfering or giving proper instructions while an inexperienced workman engaged in a dangerous operation. As to the amount of negligence on the part of the workman that will debar him from relief, the Courts do not expect too much from the labouring man, and have regard to his age, state of health, and energy, and to his skill and the conditions under which he works. Thus, if

habitual carelessness on the workman's part is allowed to pass unreproved, the employer cannot rely upon it as a defence.

In two cases the law itself lays down rules as to what constitutes negligence on the part of the workman. These are disobedience to the regulations of the factory, and neglect to report the defect which caused the accident, unless the employer or foreman already knew of its existence.

Compensation for disease contracted by work in one of the trades declared liable to cause disease can only be obtained if the malady was caused solely by the work in the factory, but, as might be expected, complaints such as ruptures and nervous affections caused by shock are treated as injuries caused by accident and compensated accordingly.

Scale of Compensation.

The provisions dealing with the amount of compensation are the least satisfactory part of the Swiss law. The law lays on the employer a liability to pay compensation for accidents which cannot justly be attributed to any default on his part, a liability which can only be supported by treating him as an insurer of his workmen. But the compensation paid is in many cases less than the workmen would justly be entitled to in a system based on insurance. Besides this, the amount to award is arrived at by a process which requires minute actuarial calculation in some parts, and then leaves in other parts the widest possible discretion to the tribunal before which the case comes.

The rules on the subject are rather complicated. In cases of injuries not resulting in death the compensation includes—

(1) The expenses of illness, nursing and medical attendance, including such surgical appliances as the injured person may require.

(2) The damage sustained in consequence of disablement from work, varying according as the disablement is complete or partial, permanent or temporary.

To calculate this damage it is necessary first to ascertain the yearly earnings of the workman. This will be the daily wage multiplied by the average number of days worked—in the case of continuous employment usually taken at 300 days a year. If the workman receives gratuitous food and lodging, the value of this is taken as part of the daily wage, while in the case of apprentices and learners receiving only a small or nominal wage a value is put upon the instruction and experience which they acquire.

The yearly earnings once ascertained, in cases of permanent incapacity an actuarial calculation is made, based upon the expectation

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of life of the workman at the time of the accident, of the capital value of a pension equal to the yearly earnings. Regard is had in this connection to the probability of the yearly earnings increasing or decreasing in the future. The amount thus arrived at is, in cases of permanent total disablement from work, the amount of the damages, subject to the deductions mentioned below. In cases where the disablement is only partial, an estimate is made of the percentage loss of earning power, and the amount of damages is reduced accordingly. This requires technical and medical skill of a high order, and accordingly various works exist for the purpose of facilitating these calculations, which estimate the value of the loss of an eye, a leg, or a finger, in a manner which reminds the reader of the blood-money provisions in a code of primitive law.

Where the disablement is only temporary these actuarial calculations are of course not necessary, though the percentage disablement has still to be estimated.

The deductions to be made from the amount thus arrived at must next be considered.

The law provides that the compensation is to be equitably reduced—

(1) If the injury is purely the result of an accident;

(2) If the injury is partly due to the fault of the injured person;

(3) If previous injuries of the workman have helped to cause the injury or to make it more serious.

The Courts also make a deduction if the injured person has aggravated the injury by not submitting to proper treatment.

No assistance is given by the law to the Courts in determining the weight to be given to these different grounds of deduction, although in practice they have a very great influence in fixing the amount of compensation, as will appear from the examples given below.

Where the illness results in death, the compensation consists of—

(1) The expenses of sickness and burial;

(2) The loss caused to the deceased during his illness owing to his total or partial disablement from work;

(3) The loss sustained by the members of his family (wife, children and grandchildren, parents and grandparents, brothers and sisters) who he was bound to maintain at the time of his death.

The extent of the liability of the deceased person for the support of his relations is determined by the law of the canton to which he belongs. The law on this question, and also as to the age up to which parents are bound to maintain their children, varies considerably in different

cantons. In some of them illegitimate children have rights of maintenance against one or both of their parents, and in such cases are entitled to the benefit of the accident compensation law.

To calculate the amount of compensation in a case of death, the yearly earnings of the deceased have to be found, and an estimate made of the fraction of these yearly earnings which he would probably devote to the support of his relations. In the absence of special circumstances this fraction will not exceed one-half, and may fall considerably below it. The annual amount by which the relatives have been deprived by the death having been thus ascertained, an actuarial calculation is made of the value of an equivalent annuity during the probable duration of the life of the deceased.

From the capital value thus ascertained deductions have to be made on account of the nature of the accident, as in the case of accidents not resulting in death.

The amount of compensation calculated is in all cases subject to the general rule, that the amount awarded, apart from the costs of medical attendance, sickness, and burial, cannot exceed either six times the yearly earnings of the workman, or the sum of 6000 francs. These limits may, however, be exceeded if the accident is caused by the criminal act (*acte susceptible de faire l'objet d'une action au pénal*) of the employer himself.

The compensation is paid, as well as calculated, in a lump sum, but the judge can, with the consent of all parties interested, direct it to be paid in the form of an annuity. It is considered an advantage to the workman to have the whole compensation paid at once, and the amount may be reduced by the Court in consequence.

Two other provisions of the Swiss law affecting the amount of compensation require to be mentioned.

(1) Where the workman is insured, and the employer has contributed half or more of the premiums paid, he is entitled to deduct the whole of the insurance money from the amount of the compensation; if he has contributed less than half of the premiums, he can only deduct from the insurance money a part proportional to his contributions.

The law further provides that this deduction can only take place in cases where the insurance covers all accidents and all diseases (*comprend tous les accidents et toutes les maladies*). This last proviso cannot be taken literally, and its meaning is very obscure. The tendency of opinion seems to be to regard it as only requiring the insurance to apply to a range of casualties substantially wider than that

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included in the liability law. Not much litigation has arisen on this subject, as the parties have generally come to terms.

(2) Revision of the compensation.

The law provides for cases in which at the hearing of the action it is impossible to form a final estimate of the consequences of the accident, or in which subsequent to the judgment a change takes place in the condition of the injured person. The judge can, either of his own motion or at the request of either party, reserve the question of a subsequent modification of the amount of compensation, but if the application for revision comes from one of the parties it must be made within one year from the date of the first judgment.

The following instances, taken from actual cases, and given in M. Soldan's book, show how the amount of compensation is in practice arrived at, and give an idea how many of the elements determining it are left in the discretion of the Court :—

1. Case of J. D., employed in the erecting shop of a machinery manufactory at a wage of 4½ francs a day, or 1350 francs a year. In consequence of a fall he had his left eye destroyed, with injuries to the bone surrounding it, and the sight of the right eye endangered. He was totally disabled during 239 days, then for 42 days he could only work half time. His earning capacity was estimated to be permanently reduced by 20 per cent., or by 270 francs a year. His age was 41, and the mortality table put his expectation of life at 26 years.

The compensation was calculated as follows :—

	Francs.
1. Medical and nursing expenses	300
2. 239 days at 4½ francs	1,075·50
3. 42 days at 2¼ francs	94·50
4. Annuity of 270 francs for 26 years, capitalized at 4,000 to 4,400 francs, but in consequence of the injury being purely accidental and of the payment of a capital sum being more advantageous, this was reduced to	3,000
Total	4,470

2. Case of S. L., aged 14 years, working at a malt-crushing machine in a brewery. His attention being distracted by a cat, he allowed his right hand to be caught in the machine. Two fingers were lost, and the third remained permanently stiff. His earning capacity was estimated to be reduced 33 per cent. The wages were 20 francs a month, with food worth 45 francs a month; the yearly earnings were therefore 780 francs. But as it was likely the wages would shortly increase they were

taken at 900 francs, and thus the loss in earning capacity was 300 francs a year. The expectation of life being 46 years, this was capitalized at 6200 francs, an amount exceeding the legal maximum, which in this case was only 4680 francs. Also the accident was partly due to his own carelessness, though the employer was to blame for letting a boy work at a dangerous machine without giving him proper instructions. Accordingly the compensation was fixed at 2000 francs, together with 82 francs for medical expenses.

3. Case of J. D., aged 28½, working as foreman in a slate quarry. He worked on an average 20 days a month, at wages varying from 4½ francs to 5 francs a day, and his annual earnings were estimated at 1120 francs. He was killed by the accidental fall of a stone, leaving a widow aged 25½, and a child three years old. It was estimated that he would probably devote 400 francs a year to the maintenance of his wife, and 200 francs to that of his child until it reached the age of 16. His expectation of life being 35 years, the wife's annuity of 400 francs was capitalized at 7400 francs, while the child's 200 francs a year for fourteen years represented a capital of 2000 francs. The sum of these, 9400 francs, was far beyond the legal maximum of 6000 francs. Deductions were made in consideration of the payment in a lump sum, of the accidental nature of the fall, and of the widow's chances of marrying again, and the compensation was finally fixed at 5000 francs.

4. Case of F. B., stonecutter, killed in consequence of a fall for which he and the employer were both to blame. He was 65 years of age, left a widow younger than himself, to whom he devoted 500 francs out of his yearly earnings amounting to 1100 francs. His expectation of life being eleven years, the value of an annuity of 500 francs for this period was about 4400 francs. But as his earnings would probably have diminished rapidly in the future, this amount was reduced to 2700 or 2800 francs. It was further reduced in consequence of the negligence of the deceased, and finally fixed at 1,000 francs.

Alienation of Compensation.

The right to compensation given by the Act and the compensation itself when recovered cannot be alienated or taken in execution, nor do they pass to the trustee in case of bankruptcy.

Procedure.

The claims to compensation given by the law are enforced in the ordinary way by the cantonal Courts, subject to an appeal to the federal Court. The cantons are empowered to make legislative or administrative provisions for the speedy decision of actions under the Act.

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Period of Limitation.

The action must be brought within one year from the date of the accident, or from the date on which it was officially certified that the disease in question was contracted by the workman in the course of his employment, subject in both cases to the ordinary law as to circumstances preventing the statute from running. Provision is however made against the too harsh operation of this rule. The employer is bound to report the accident within nine months, and if he fails to do so the workman has three months from the date when the report is finally made, within which to bring his action. Besides this, if the officials, federal or cantonal, in charge of the administration of the Act, ascertain that reasonable compensation has not been paid in a case within the law, they are bound to report the circumstances to the government of the canton, which will inquire into the matter and report the result of its inquiries to the persons interested.

Contracting Out.

This is absolutely forbidden, but agreements made subsequent to the accident regulating the amount of compensation payable are valid, though they may be set aside for unfairness within the usual period of limitation.

Even before the law of April 26, 1887, described above, came into operation, a movement in favour of a system of sickness and accident insurance had made itself felt. To deal with the subject satisfactorily was beyond the competence of the cantonal governments, and accordingly the federal council took it up. The necessary statistical inquiries were made and different projects examined. Finally, on June 13, 1890, an amendment to the constitution, brought forward by the federal council, was unanimously adopted by the federal assembly, and afterwards, on November 21, 1890, approved on the referendum by 283,228 votes to 92,200. This amendment empowered the Confederation to legislate in the direction of sickness and accident insurance with due regard to the interests of the existing sick clubs, and to declare the insurance compulsory for the whole population or for particular classes.

Inquiries were accordingly made as to the working of the German and Austrian systems, and bills were drafted on the subject in the beginning of 1893. These were thoroughly discussed and amended; at the beginning of 1896 they were laid before the federal assembly, and were considered by both Houses in the course of the year.

There does not seem to be much likelihood of their becoming law in the immediate future, especially as it will be necessary to impose fresh taxation to meet the burden imposed by them upon the Confederation. If passed by the federal assembly they will probably require to be submitted to the referendum.

Details of the Accident Insurance Bill follow under the usual heads.

Persons Insured.

The benefits of the law extend to all persons earning not more than 5000 francs a year, and working on account of others in transport of any description, in establishments of trade or commerce, or of agriculture or forestry, and also to domestic servants. They are insured from the age of fourteen upwards, and whether they receive pay for their work or not. Persons employed in establishments worked by the Confederation, or by cantons, communes, or other public bodies, are within the law, unless they are discharging some public office. With the permission of the Confederation, the Insurance Office may undertake the business of insurance for larger amounts than those fixed by the law, and also that of persons not within its scope. The obligation to insure may also be extended by the insurance communes, or by the cantons, to day labourers and persons engaged in home industries. The Employers' Liability Acts of 1881 and 1887 are repealed.

Injuries Insured Against.

A claim to compensation arises in the case of all injuries not caused deliberately by the person injured, nor due to some criminal or fraudulent act on his part; but gross carelessness inducing the accident may be punished by reducing to the extent of one-half the compensation due to the injured person and his relatives. The Insurance Office may also exclude persons from the benefit of the insurance for a period not exceeding five years, for any act entailing a forfeiture or diminution of the compensation, or for any attempt to defraud.

Diseases due to employment are not included in the insurance, the employer remaining personally liable to pay compensation for them.

Scale of Compensation.

As in the German Trade Insurance, with the following differences:—

(1) The pensions begin in the seventh week after the accident.

(2) The funeral expenses may not exceed 60 francs.

(3) The amount of the widow's pension is 30 per cent.

(4) The widower of a female worker killed by accident, if he is

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incapable of supporting himself, or becomes so within five years of her death, has a pension of 25 per cent.

(5) The pensions for children are paid up to the age of sixteen, and in case of the death of both parents amount to 25 per cent.

(6) Brothers and sisters up to the age of sixteen share the pensions of the ascendants.

(7) The pensions in cases of death must not exceed 50 per cent. of the yearly earnings.

(8) Adopted children and children legitimated before the accident have the same rights as if they were legitimate.

(9) An illegitimate child has a claim to compensation in case of the death of its mother, and also, if the paternity has been established, in case of the death of its father.

(10) The widow or widower has no claim if divorced or judicially separated from the deceased.

The earnings upon which the pensions are based are not those actually received by the injured person, but the highest earnings of workmen of the class to which he belongs. These classes are nine in number, and are composed as follows:—

Class	1,	of workmen earning	less than	...	1.20 fr.	a day.	
,,	2	,,	,,	from 1.21 fr.	to	1.50 fr.	,,
,,	3	,,	,,	,, 1.51 fr.	,,	1.80 fr.	,,
,,	4	,,	,,	,, 1.81 fr.	,,	2.40 frs.	,,
,,	5	,,	,,	,, 2.41 frs.	,,	3.00 frs.	,,
,,	6	,,	,,	,, 3.01 frs.	,,	3.60 frs.	,,
,,	7	,,	,,	,, 3.61 frs.	,,	4.50 frs.	,,
,,	8	,,	,,	,, 4.51 frs.	,,	6.00 frs.	,,
,,	9	,,	,,	,, 6.01 frs.	,,	7.50 frs.	,,

For the purpose of deciding what are the actual earnings of the injured person, and thus determining to what class he belongs, some rules are laid down in the bills.

The daily earnings are obtained by dividing a yearly salary by three hundred, or a monthly salary by twenty-five (*sic*). Where the wages are paid wholly or principally in kind, those ordinarily paid in the district for the same class of work are taken. The wages of apprentices, etc., are assumed to be equal to the lowest wages of adult workmen engaged in the same kind of work; but in case the person injured is under the age of twenty-two, his pension after he attains that age is based upon the wages he probably would have earned, had he not sustained the injury.

Assessment and Payment of Compensation.

When an accident occurs it must be reported either by the injured person or his employer to the sick club of which he is a member. The

sick club proceeds to hold an inquiry into the circumstances, causes, and consequences of the accident, the expenses of which are borne by the Insurance Office. The result of this inquiry is communicated to the district manager, who allows the temporary payments to which the injured person is entitled. The pensions of more permanent nature are awarded by the Insurance Office, subject in all cases to an appeal to the federal Court. The award can be revised at any time. The pensions are payable through the post-office.

The Insurance Office is empowered to capitalize and pay at once any pension which does not amount to 100 francs a year, or the owner of which is abroad. In other cases capitalization is not generally allowed, and the consent of the pensioner is always required.

Period of Limitation.

Claims for compensation must be made within a year, unless the accident has been brought to the knowledge of the Insurance Office within that period.

Organization of the Insurance.

Switzerland is divided for the purposes of the law into insurance communes and insurance districts. The insurance communes are normally identical with the ordinary administrative communes if they contain more than 2000 inhabitants, or consist of several small communes grouped. The insurance districts are to correspond with the political divisions of the Confederation, and each is to possess a manager and a district council, whose functions are chiefly connected with the sick insurance.

The accident insurance is managed by a single Insurance Office, which consists of a president and two or three vice-presidents appointed by the federal council, together with the necessary staff. The office is assisted by an insurance council, consisting of the president, vice-presidents, and from six to sixteen other members appointed for three years by the federal council, of whom at least three must be contributing employers and three others persons insured. The services of the council are especially required in connection with the settlement of the table of risks, the regulations for the prevention of accidents, the provisions as to assessment of contributions, the yearly report and accounts, and questions relating to the reserve fund, all of which are dealt with below. The office is under the supervision of the federal council, to which an appeal from its decisions is in some cases allowed.

The Confederation pays the expenses of administration of the

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Insurance Office, and subscribes to ambulances, etc. It contributes one-fourth of the premiums payable in respect of the compulsory insurance, and also makes contributions towards the expenditure of the sick clubs in return for the work done by them in connection with the accident insurance. The Insurance Office may also, with the permission of the Confederation, contribute to the erection and carrying on of hospitals, convalescent homes, dispensaries, etc. The necessary moneys have to be voted by the federal assembly. The premiums to be paid for the insurance are assessed according to the amounts paid in wages and the degree of risk, upon the basis of a table of risks drawn up by the Office and approved by the federal council, a co-efficient of risk being assigned to each class of employment. Every employer must report at once any change in the earnings of his workmen and any alteration in the character and place of their work. The assessment is made by the district managers, subject to an appeal to the Office. The burden of the insurance is borne entirely by the employer, and he is forbidden to recover the premiums from his workmen in any shape or form. Day labourers and persons engaged in home industries pay their own premiums, the insurance communes being responsible for their default. The premiums are payable monthly in advance, either to the Insurance Office direct or to the sick clubs. Suitable means are provided for enforcing payment. Disputes between the Office and the sick clubs are determined by the federal Court.

The premiums levied must be sufficient to cover in each year the capital value, calculated according to the tables prescribed by the Office, of the pensions granted during the year. Provision is also made for the formation of a general reserve and a special reserve to meet extraordinary accidents. A report and the accounts of the office have to be laid every year before the federal assembly.

The accident insurance system contemplated by the bills is organized on bureaucratic lines. No provision is made for the workmen having any voice in its management, the employers being equally excluded from participation in the sickness insurance. Unions of employers have a *locus standi* in the consideration of matters, such as the revision of the table of risks, the classification of the workmen, and the making of accident prevention regulations. The number of workmen coming within the compulsory provisions of the bill is estimated at about 600,000, with a possible addition of 100,000 more, if day labourers and persons engaged in home industries are included.

Prevention of Accidents.

Employers are bound to make regulations for this purpose, and the Office may also make general or special regulations, subject to an appeal to the federal council. Non-compliance with these regulations may be punished in various ways, and in the last resort the federal council may order the business to be closed by the government of the canton in which it is situated.

VIII. FINLAND.

In this country, until quite recently, no general law of employers' liability existed, though there were several enactments imposing upon employers the duty of taking suitable precautions against injury to their workmen.

In the year 1894 a bill on the subject was approved by the estates, and received the sanction of the Czar on November 7, 1895. It imposes upon a large number of employers the liability to pay compensation according to a fixed scale, for injuries sustained by the workmen they employ. The payment of this compensation in serious cases is secured by making it obligatory upon the employer to insure its amount in approved offices. The bill contains no provisions for the prevention of accidents. Details of it follow under the usual heads.

Persons entitled to Compensation.

These are workmen, but not persons exercising superintendence over the work, employed in—

(1) Pit sinking, mining, stone-cutting, and sawmills, breweries and distilleries: also factories and industries conducted on the factory principle, where smelting furnaces or kilns, steam-boilers or machine power of any kind are employed, and also establishments in which explosive substances are produced or regularly used.

(2) The construction of railways, canals, quays, and lighthouses, and also the construction of bridges, which are being erected for the State or the Communes.

(3) The building of churches, factories, and of houses of more than two stories in cities and market towns: and the building of similar houses in the country, if they are being erected for the State, the Commune, or other corporate bodies.

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(4) The construction and maintenance of public sewers, water and gas-pipes, and electric conductors.
(5) The working of public railways and tramways.
(6) The loading and unloading of goods for business purposes, salving, diving, and chimney-sweeping.

Persons liable to pay Compensation.

These are the employers of the workmen injured, the employer being defined as the person for whose account the trade or business is being carried on. If an undertaking coming under one of the heads (2), (3), or (4) above is wholly entrusted to another person, that person is solely responsible; if it is only partially entrusted to a contractor, the contractor is responsible, but the person for whose account the undertaking is being carried out is responsible for the consequences of the contractor's negligence.

Injuries for which Compensation can be obtained.

These include all injuries which are not due to the deliberate act or gross negligence of the injured person, or to the deliberate act of persons other than those entrusted with supervision over the work, or to *force majeure* or other circumstances in no way connected with the character of the work.

Scale of Compensation.

(a) *Injuries not resulting in death.*

In cases of temporary total disablement the pension is 60 per cent. of the average wages of the injured person. It must not exceed 2½ marks a day, and begins to be paid seven days after the accident.

In cases of permanent total disablement the pension is 60 per cent. of the yearly earnings, taken at not less than 300 or more than 720 marks; but the pension of an adult cannot exceed his actual earnings. If the disablement is only partial the compensation is reduced proportionally.

Compensation is paid on the scale for temporary disablement until the injured person is convalescent, or until 120 days have elapsed since the accident.

(b) *Injuries resulting in death.*

Compensation is paid according to the scale above until death takes place; afterwards the widow gets 20 per cent., each child under the age of fifteen, 10 per cent., or, if both parents be dead, 20 per cent., of the yearly earnings; but the total pensions must not together exceed 40 per cent. of the yearly earnings as defined above. If the widow

marries again she gets two years' pension in discharge of all further claims.

The compensation is paid in periodical instalments. The only case in which it may be capitalized and paid at once is where there is permanent disablement, total or partial, and the compensation does not exceed 20 marks a year, but then only with the consent of both parties.

Payment of Compensation and Insurance.

Compensation for temporary disablement may be paid either directly by the employer or through an insurance office, but the payment in cases of permanent disablement or death must be insured. The State and the Communes are not bound to insure, and employers are also excused who cover their liability with approved security (*Geldanlage*); but this dispensation from insurance can only be granted for three years at a time.

The insurance is to be effected at the cost of the employer with one of the following offices :—

(1) A State Office to be founded in Finland for the purpose.
(2) Recognized insurance companies having their chief office in Finland.
(3) Authorized mutual insurance offices founded by the employers.
(4) Recognized foreign insurance companies, but these are bound to reinsure in Finnish offices the pensions for life which they become liable to pay.

Contracting Out.

This is forbidden.

IX. RUSSIA.

The provisions of the general law as to the responsibility of employers are contained in the two following sections of the Civil Code.

S. 684. Any person who causes damage to another by any act or negligence, even if it be not criminal or penal, is bound to indemnify any person affected thereby, unless he proves that he has acted in self-defence according to law, or that the case is one of *force majeure.*

S. 687. Principals are responsible for the acts of their agents acting in obedience to orders received from them.

Special laws exist relating to railways, which apply to passengers as

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well as to persons employed on the lines, and the maritime law gives compensation on an unusually liberal scale to injured sailors.

The law of masters and servants of 1861 contains some provisions that are worth recording.

S. 60. Where a workman receives a serious injury in the course of the work he is directed to do, and remains disabled, he is entitled to receive from his employer double the amount of the wages fixed for the whole period of his employment; if the injury is slight, he is entitled to be kept in hospital until his cure is complete, and no deduction can be made from his wages.

S. 61. If he dies in consequence of his injuries, his family get double the amount of his wages.

S. 62. When the workman's life is in danger, the employer is bound to summon, at his own expense, a priest belonging to the nearest church, to receive the confession of the dying man and to administer the last sacraments. The funeral expenses fall upon the employer.

In 1889 a bill was laid before the Imperial council by M. Wichnegradsky, which gave compensation in case of injury due to defects in plant, or to the absence of safety appliances usually adopted for the avoidance of accident or disease, or to the negligence of persons in superintendence. The compensation was to take the form of pensions, as in Germany, but the scale was to be more liberal.

In 1893 the Minister of Finance, M. Witte, laid before the Imperial council a bill on the subject of employers' liability, which apparently has not yet become law. Its principal features were that it applied to diseases of employment as well as accidents, laid down a scale for the compensation, which was normally to be awarded in the form of pensions, and contained provisions for securing its payment. No system of insurance was introduced, and the employer was made directly liable. It contained no provisions directly bearing upon the prevention of accidents, but its author declared his belief that without such provisions the law would be unsatisfactory, as money payments could never be a complete compensation for physical injuries. He proposed to deal with the subject in a subsequent measure. Later on, he declared himself in favour of a system of accident insurance. A Mines Accident Prevention Act, dated April 5/17, 1894, is already in existence.

Details of the bill follow under the usual heads.

Persons entitled to Compensation.

These are workmen and foremen employed in factories, works, and manufactories, railway and other mechanical workshops, in mining of

every description, and also those engaged in building operations (whether they are employed by the State, town or country Communes, companies, or individuals). Disputes as to whether particular establishments are within the law are decided by the Minister of Finance in concert with the Minister of Justice, and, if necessary, with the Minister of Domains.

Persons liable to pay Compensation.

These are the employers of the workmen and foremen, but they have a remedy over against third persons who are responsible for the accident.

Injuries for which Compensation is given.

The workman or foreman has a right to compensation for all injuries sustained, and all diseases contracted by him in the course of his employment, unless they are caused by *force majeure*, by wrongful acts of third persons not connected with the business, or solely by the fault or deliberate acts of the injured person.

Scale of Compensation.

(a) *Injuries not resulting in death.*

The compensation consists of the medical and nursing expenses, together with, in the case of total disablement, a pension corresponding to the yearly earnings of the victim. If these exceed 1200 roubles the excess is not to be taken into account. In the case of minors the pension is reckoned on the basis of the actual wages only during minority; afterwards it is based upon the mean earnings of adults engaged in the same class of work. When the disablement is only partial the pension is diminished proportionally. If both the workman or foreman and the employer are to blame for the accident, this pension may be reduced to between one-half and three-quarters of the normal amount, according to the degree of blameworthiness of the injured person. The sickness expenses are calculated according to the tariff of the workmen's hospitals in the district and need not be paid if the injured person is in a free hospital, or is being treated at the expense of the employer.

(b) *Injuries resulting in death.*

Compensation is paid on the above scale until death takes place. If this occurs within three years of the accident, the compensation consists of the funeral expenses, not exceeding 20 roubles for an adult or 10 for a minor, and of pensions to the relatives of the deceased. The widow and a widower incapable of supporting himself get 30 per cent. of the yearly earnings until death or remarriage; each child 15

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per cent., or if both parents are dead 20 per cent., up to the age of fifteen; each parent 15 per cent. These pensions must not together exceed 60 per cent. of the yearly earnings, or 720 roubles; if they do the parents forfeit theirs, and the others abate rateably. The widow and children have no claim if the marriage was contracted after the accident.

In cases where the injury is caused by the fault of the employer or his foremen, and the employer has contributed to a sick club or an accident insurance society to which the injured person belongs, he is entitled to the benefit of the sick allowances or insurance money to an extent proportional to his contributions.

If the employer has been guilty of some criminal act the extent of his liability is to be settled according to the general law: a criminal act on the part of the injured person involves the forfeiture of his claim.

Assessment of Compensation.

It is intended that the parties should normally agree the amount between themselves. Such an agreement is binding and conclusive if certified by the nearest district police magistrate or justice of the peace. This certificate may be refused if the agreement is manifestly unjust to either party. In default of agreement the compensation is assessed by a judicial tribunal, which may be, at the option of the claimant, the court of the place where the accident occurred, or where the employer resides, or where the chief office of his business is situated. In Governments in which exist the trade bureaux established by the law of March 2, 1892, for the purpose of regulating the relations between employers and employed, the compensation may, with the consent of both parties, be assessed by these bureaux. A limited right of appeal exists from them to the Minister of Justice. The compensation may be awarded in the form of pensions, or if not exceeding six times the yearly earnings, of a lump sum, the latter only with the consent of the employer. In the case of a change in the circumstances upon which it is based, the award can be revised within five years at the instance of the employer, or within two years at the instance of the pensioner.

Provisions for securing Payment of Compensation.

The employer has to pay the pensions at the proper periods into the district treasury (*Ortskasse*), which remits them to the dwelling place of the person entitled. If a pension is not paid regularly the pensioner can require its capital value to be paid into the district treasury in gold or Government securities.

The pensions form a charge on the business, and become liabilities of

any person purchasing it. If the business goes into liquidation, they are preferred debts, and must be secured in the manner above described. If the business is wound up voluntarily six times their amount must be paid in discharge.

Alienation of Pensions.

Pensions can neither be mortgaged, assigned, nor attached.

Period of Limitation.

The claim for compensation must be made by the relatives within one year from the date of the death, by the injured person himself within one year from the date of the accident, or from the date upon which it was officially certified that he was suffering from disease contracted in the course of his employment. In cases where an informal agreement for compensation has been made, which is afterwards broken by the employer, the Court has power to enlarge this time.

Contracting Out.

This is forbidden, nor are agreements regulating beforehand the amount of compensation recognized by the law.

X. HUNGARY.

In Croatia, Slavonia, Siebenbürgen, and parts of Hungary, the Austrian Civil Code is in force; in the rest of Hungary proper a common law prevails which gives much the same extension to the responsibility of the employer.

An Act of July 7, 1894, imposes an extended liability upon railway companies on the lines of the Austrian Law of March 5, 1869. According to this Act, if in the working of a railway, even though it be not yet open to public traffic, any person is killed or sustains bodily injury, the undertaking is responsible, unless it proves that the death or injury was due to *force majeure*, to some act of a third person which the undertaking could not prevent, or to the negligence of the injured person himself.

In 1893 the Government brought forward a measure consisting of two parts, the first containing regulations on the subject of accident prevention, the second dealing with the question of compensation. In deference to the wishes of those who were afraid of laying undue burdens upon the industry of the country, the first part only was proceeded with, and it became law on December 27, 1893. The second

HUNGARY. part has not hitherto been further considered, but some particulars of it are given below under the usual heads.

Persons entitled to Compensation.

These include persons employed in any of the forty-seven industries mentioned in the Factory Act of 1884, and generally to those employed in establishments where machinery driven by steam, gas, air, water, wind, or other natural force, or by animal power, is used, or where, no machinery being used, not less than twenty workmen are regularly employed. The bill also applies to agricultural and forestry concerns where some elementary force or steam boilers are employed. Building operations, the transport, stowing, and loading of goods, work in connection with roads, canals, sewers, and wells, the manufacture of explosives, gas and electric lighting works, and chimney-sweeping are expressly included. The Minister of Commerce has the power of modifying this list, either by including new dangerous trades, or excluding those found not to involve risk. The bill did not apply to railway servants, miners, or to persons engaged in home industries.

Persons liable to pay Compensation.

These are the employers of the workmen, but they have a remedy over against third persons who are to blame for the accident.

Injuries for which Compensation is given.

Compensation is payable in all cases of injury, unless the employer proves that it was deliberately caused by the injured person, or unless it was due to earthquake, war, or riot.

Scale of Compensation.

(a) *Injuries not resulting in death.*

The compensation consists of medical and nursing expenses, and sick pay, so long as the injured person is not entitled to receive these from some recognized sick club.

If the injury results in total or partial permanent disablement the injured person receives a lump sum amounting, in the former case to nine hundred times, in the latter case to between three and six hundred times his daily wages. For the payment of this lump sum may be substituted, with the consent of the injured person, a pension the amount of which is calculated according to a fixed scale, depending on his age. Wages paid in kind are valued at the current prices in the district, and those of apprentices, etc., are taken at the lowest wage of adult workmen.

(b) *Injuries resulting in death.*

The funeral expenses are paid, to an amount not exceeding 45 florins. The widow, children under fifteen, grandchildren, parents, and grandparents dependant on the deceased, receive between them a lump sum equal to six hundred times the daily wage.

Alienation of Pensions.

This is forbidden, as in Austria.

Period of Limitation.

This is one year from the date of the accident.

Contracting Out.

This is forbidden.

Payment of Compensation and Insurance.

The employer may escape from personal liability for payment of the compensation, other than the medical or nursing expenses, by effecting an insurance either with some recognized office or with one of the mutual insurance associations of employers established under the bill. These associations are to consist of not less than ten employers, employing two thousand workmen or more. Their functions may extend, in addition to the insurance, to the organization and supervision of measures for the prevention of accidents. Their statutes are to be approved by the Government, and are to provide for the insurance of the members at rates depending upon the degree of danger present in their establishments. In the case of dangerous trades the Government can compel the employer to insure.

XI. FRANCE.

At the present time the law applicable to the subject of employers' liability in France is contained in Articles 1382–1384 of the Civil Code, which are as follows :—

1382. Any act which causes damage to a person obliges the person, through whose fault it has occurred, to make reparation.

1383. Every one is responsible for the damage which he has occasioned not only by his acts, but also by his negligence or imprudence.

1384. A person is responsible not only for the damage which he

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occasions by his own proper acts, but also for that which is caused by the acts of persons for whom he ought to answer, or for the things which he has in his keeping. . . . Masters and employers are responsible for the damage occasioned by their servants and those appointed by them to the duties in which they have employed them.

In the interpretation of these sections a doctrine analogous to that of common employment in England was at one time adopted, and the workman is exposed to the defence of contributory negligence. In consequence of the decisions of the Courts not being binding authorities, the construction of the law has varied greatly from time to time, especially as to the definition of contributory negligence. The gross inequality so often found in other countries of the amounts of compensation awarded in different cases has also made itself felt in France.

Numerous proposals have been made from time to time for the improvement of the law. A description of some of the later of these attempts is given below. The general drift of opinion seems to be in favour of a system of compulsory insurance upon the German plan.

In the year 1891 numerous bills on the subject were introduced into the Chamber of Deputies. They were all referred to the labour committee of which M. Ricard was chairman. The result was a bill drawn up by the committee which was passed by the Chamber on June 10, 1893.

This bill proposed a system of universal insurance on the lines of the German law. Its principal features are summarized below under the usual heads.

Persons Insured.

These include workmen and foremen employed in building and manufacturing establishments, foundries, factories, timber yards, transport undertakings by land or water, public warehouses, mines, pits, quarries, and also in businesses or departments of businesses in which explosives are produced or used, or in which steam engines, or any other machinery driven by natural power, such as wind, water, steam, gas, hot air, electricity, etc., or by animal power, are used. Agricultural concerns are within the law, if such machinery is used in them.

Injuries Insured Against.

No limit is fixed, but gross carelessness on the workman's part may be punished by the reduction of his pension; on the other

hand, gross negligence on the employer's part may lead to the compensation being increased beyond the usual amount up to complete indemnity.

Scale of Compensation.

This is much the same as in Germany. Nothing is to be paid during the first four weeks, the employer remaining personally responsible to the injured person unless he has secured him the benefits of some club which will give him free maintenance and an allowance equal to half his wages during illness or during thirty days at least.

The usual provisions for the calculation of the daily wages are inserted. In certain cases payment of the compensation in a lump sum is allowed. Claims for temporary compensation, medical attendance, etc., are to be settled without appeal by a *juge de paix;* claims for pensions of a permanent character by a court consisting of a judge and a jury of six chosen by lot, three from among the employers, and three from among the workmen in the district.

Organization of the Insurance.

The employers are grouped in district unions (*Circonscriptions*) on a territorial basis. The administration of these unions is in the hands of committees elected by the members. The capital value of the compensation granted is to be raised during each year by assessments according to amount spent in wages and co-efficient of risk, as in the German law. The ultimate direction of the insurance is entrusted to the *Comité supérieur des accidents du travail,* a body presided over by the Minister of Commerce and composed of senators, deputies, members of the *Conseil d'État,* and other officials. The workmen are not represented upon it, and its functions are much more restricted than those of the German Insurance Office.

Prevention of Accident.

The only provision as to this was that establishments in which thorough precautions to ensure safety were taken might have their premiums reduced as much as 30 per cent. Arrangements are made for holding an inquiry in cases of serious injury.

When the bill reached the Senate it was referred to and severely handled by a committee, of which M. Bardoux was the chairman and M. Poirrier the reporter. The committee, while recognizing the desirability of such a change in the law as would ensure to the workmen the certainty of receiving compensation for injuries sustained by

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them, and would relieve employers from the uncertainties and risk of the former law, objected strongly to the principle of compulsory insurance. They consider that the substitution of the responsibility of the State for that of the individual employer would lead to disastrous results, owing to the relaxation of care that would follow. Besides this, an impersonal association would be much less generous in assessing compensation than the employers themselves, and appeals would probably be very numerous. The proposal to levy at once the capital value of the pensions was also not approved of, as it would mean the accumulation of enormous funds, estimated to amount in twenty years to not less than forty millions sterling.

The committee made numerous amendments in the bill, generally in a direction unfavourable to the workman. The scale of compensation in particular was entirely recast. According to the committee, in cases where the injuries did not result in death the pensions were to consist of two-thirds of the daily wage in case of total disablement, and of one-half of the loss of earning power in case of partial disablement. If the disablement was only temporary, the pensions were not to exceed 3 francs in the first, and $3\frac{1}{2}$ francs in the second case. In cases where the disablement was lasting, the workman might require the payment in a lump sum of one quarter of the capital value of his pension, and that one-half of such capital value should be expended in buying a life annuity for his wife. If the injury resulted in death the widow was to get 20 per cent. of the daily wage until death or remarriage; three years' pension was given on remarriage. The pensions to the children were 15 per cent. if one, 25 per cent. if two, 35 per cent. if three, 40 per cent. if four or more; if both parents were dead each child got 20 per cent., not more than 60 per cent. in all being given; these pensions ceased at the age of sixteen. If there were neither wife nor children the ascendants might have 10 per cent. each, or not more than 20 per cent. in all.

The territorial insurance system proposed by the Chamber was entirely swept away, and a variety of provisions substituted with the object of securing the payment of the compensation awarded. The sick expenses and the pensions for temporary disablement were made privileged debts, and the employer must give security for the payment of the permanent pensions. A large choice was given to the employer as to the security that might be accepted, it being left to the *Conseil supérieur* to elaborate the necessary regulations on the subject.

Among the minor alterations made by the committee of the Senate may be mentioned a provision that the arbitration courts should consist of two employers and two workmen, with a judge as president. The period of limitations was to be one year, and a revision of the

pensions might be required within three years. The enumeration of the persons insured was cut out, and it was left to the Government to determine by decree to what industries the law was to apply.

When the bill as amended came to be considered by the Senate this last provision was objected to, and the bill referred back to the committee, which re-inserted the definition clause contained in the bill as it came from the Chamber. This still did not give satisfaction, and the bill was again referred back, with the result that the committee resigned. They were with difficulty prevailed upon to return to their labours a third time, when, to conciliate the agricultural interest, they struck out the provision relating to the use of machinery worked by animal power, and excluded from the scope of the bill concerns which used motive power, but in which not more than three workmen were employed. Instead of the system of guaranties a new method was tried. The pensions were to be distributed by the Caisse Nationale d'Assurances, to which the employers were to pay them and also a sum to be fixed by decree, but not exceeding 3 per cent. of the instalments. This additional sum was required in order to provide against the failure of the employer.

The bill was not further considered before the adjournment in the summer of 1895.

On March 24, 1896, a bill on the above lines, but simplified as to its details, was read a second time by the Senate. No provision was made for the appointment of boards of arbitration, but the pensions were to be assessed by the ordinary tribunals. No security was to be taken for the payment of the compensation, but there was merely a general provision that all insurance offices were to be under the supervision of the State. A clause to prohibit contracting out was contained in the bill.

XII. BELGIUM.

In spite of many attempts to improve it, the law of employers' liability in Belgium remains that of the Code Napoleon; but what distinguishes this country from others is the attempt that has been made to solve the problem by the aid of new interpretations of the existing law instead of by legislative alterations. Such attempts are more easy in countries like Belgium, where the decisions of the Courts are not binding authorities, than they would be in England. The simplest of these plans was that of M. Prosper Staes, who maintained that the current interpretation of the Code was wrong, and that it made the employer

BELGIUM. *primâ facie* liable for the injuries happening in his establishment, and laid on him the burden of proving that the accident had occurred through no fault of his or his agents. A better-known theory is that of M. Sainctelette, which has obtained considerable favour among jurists. He goes outside the Code, and lays down the proposition that in every contract between employer and workman there is an implied term that the employer will indemnify the workman for any injuries or loss he may sustain in the course of his employment. This would give the workman compensation for all injuries not caused by his own negligence, and would leave the burden of proving the negligence on the employer. Another theory, that of M. Eudore Pirmez, appears to be based upon the principle that a man is responsible to all the world for things which he makes use of for his own benefit, just as in England a man who keeps a tame bear is liable for any mischief it may do. None of these solutions appear to have been considered satisfactory, as it seems to have been felt that responsibility enforced by actions at law could never be anything but a source of discord between employers and workmen. The Labour Commission which sat in 1886 and 1887, after a good deal of discussion, came to a conclusion in favour of a system of universal compulsory insurance managed on the German lines by association of employers. Since then numerous congresses on social and labour questions and various public bodies have passed resolutions in favour of the principle of compulsory insurance, and in some cases approved of detailed schemes for carrying out this principle.

In 1890 a bill on the subject was laid before the Chamber of Deputies by M. Janson and others. This bill proposed a system of compulsory insurance of the German type, which was to cover all workmen and foremen who were exposed by reason of their employment to the risk of industrial accidents. They were to receive compensation for all injuries not due to their own carelessness, stupidity, or disobedience, and also for diseases caused by their employment. The insurance was to be worked by associations, but the employer was free, subject to certain conditions, to insure himself with private offices. The premiums were to be borne, as to seven-tenths by the employer, two-tenths by the workman, and one-tenth by the State. A scale of pensions was fixed, and the assessment of the compensation to be paid by the associations or the insurance offices was to be carried out by boards composed one-half of workmen and the other half of employers. The associations also had certain powers in the matter of accident prevention.

Next year (1891) a committee was appointed by the Government to

draw up a bill on the subject, and the result of their labours was laid before the Chamber of Deputies. According to their scheme accidents were divided into three classes— *BELGIUM.*

(1) Those due to the acts or defaults of the employer.

(2) Those due to the fault of the workman, or to causes unconnected with his work.

(3) Those occurring in the course of the work, or in consequence of the risks attending it, or due to chance or slight carelessness on the part of the employer or workman.

In the first class the workman was left to his remedy at law; for the second the employer was under no liability; in the last case the workman received compensation in manner prescribed by the bill. The scale was laid down by the bill, and resembled that contained in the German Acts. If the employer had insured the workman at his own cost and within the prescribed conditions, his liability to pay the compensation was transferred to the insurer. If he had not insured, he must pay the capital value of the pensions awarded into a fund guaranteed by the State. Contracting out was forbidden. In certain industries the insurance was obligatory. These were quarrying, mining, and other subterraneous works, railway working and navigation in inland waters and at sea, workshops, factories, and industries, in which power was used, industries in which explosives were manufactured or used, and others to be named by the Government.

Since 1891 the attention of the legislature has been taken up by other matters, and no further progress has been made in dealing with the question.

XIII. ITALY.

The law at present in force is contained in Arts. 1151–1153 of the Civil Code, which are identical with Arts. 1382–1384 of the French Civil Code.

During the years 1879 to 1886, various proposals for the amendment of the law were laid before the legislature either by the Government or by private individuals. These schemes contemplated the payment of compensation by the employers for injuries due to industrial accidents. Payment was to be made according to some in a lump sum, according to others in pensions on the lines of the German law. A peculiarity found in more than one of them was the fixing of a minimum below which the award might not fall, power being given to the Court to award larger sums if it thought fit. This minimum was generally a high one the injured person, according to some of the proposals,

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receiving his full wages during temporary disablement. As to the basis of liability, there was a difference of opinion between the Chamber and the Senate, the former proposing to make the employer liable in all cases in which he could not prove that the injury was due to accident, *force majeure*, or the negligence of the workman. The view of the Senate was that regulations for securing safety should be prescribed for the various industries, and that the employer should not be held liable unless it were shown that he had made default in complying with them. Insurance against their liability on the part of the employers was to be encouraged by allowing them the benefit of the insurance monies in return for a substantial contribution to the premiums.

On July 8, 1883, a law was passed which created a national office for insurance against industrial accidents. This was founded, and to a limited extent guaranteed, by a number of previously existing savings banks and other institutions. Its function was to undertake the insurance of workmen, and of seamen employed in harbour service. The workmen may be insured individually, or all those employed in an establishment may be insured collectively. The office may also guarantee to workmen insured collectively the payment, in addition to the amounts secured by the policy, of anything further which may be recoverable at law from the employer. The payments insured take the form of pensions graduated on the lines of the German system. The premiums are calculated according to an elaborate table of risks drawn up for the different trades.

The office is managed by a committee consisting of representatives of the founding institutions, which also transact the business of their respective districts. It is to be self-supporting, the intention being that the founding institutions shall be gradually repaid the amount of the capital contributed by them when the office was started. The Government takes no part in the management of the office, but permits it to use the machinery of the post-office savings bank free of charge.

The operations of the office have not been on a very extensive scale, nor do they show much tendency to increase. At the end of 1894 the number of current policies was 3180, insuring 129,296 workmen, more than half of the insurances being effected with the Milan branch of the office. Small as these numbers are, it is stated that the office insures nearly three times the number of persons insured against accident by private companies. The financial results of the working for 1894 show that the compensation paid and general expenses exceeded the premiums received by 24,245 francs. The expenses amount to about 22 per cent. of the compensation paid.

In 1889 the question of accident insurance was again taken up by

the Government, and since then scarcely a year has passed in which some bill proposing a compulsory insurance of workmen against accidents has not been considered either by the Chamber or the Senate. All these bills have been very much on the same lines, and it will be sufficient to give here an account of the latest of them, that of M. Barazzuoli, introduced on June 13, 1895, in the form in which it was reported by a committee of the Chamber on December 4, 1895. Its distinctive feature is the prominence given to the provisions for the prevention of accidents, which appear at the commencement of the bill, as if to give emphasis to a disposition which has made itself widely felt in Italy during the discussions on employers' liability in recent years, by treating the subject of accident prevention as the principal question to be dealt with, to which compensation and insurance are merely subsidiary.

Persons Insured.

These are—

(1) Workmen employed in mines, quarries, peat-bogs, building operations, the generation of gas and electricity, telephone systems, industries dealing with explosive substances, arsenals and ship-building yards.

(2) Workmen employed in businesses where motive power is used.

(3) Workmen employed in connection with steam-boilers outside workshops.

(4) Workmen employed in the construction and working of railways, in carriage by water, on tramways worked by mechanical power, and on draining and irrigation works, on the construction and maintenance of harbours, canals and dykes, and also of bridges, aqueducts, and national or provincial roads.

The obligation to insure does not arise in cases (2) and (4), unless more than five workmen are engaged in the work. It extends to workmen in the employ of the State, the Provincial Governments, or the Communes.

Workmen are defined to include—

(1) Persons employed, permanently or temporarily, at a fixed or task wage, on work done away from their dwellings.

(2) Persons under the like circumstances superintending the work of others, and receiving fixed wages which are not higher than six francs a day, and are paid not less often than once a month.

(3) Apprentices receiving pay and taking part in the work.

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Injuries Insured Against.

The insurance is against industrial accidents generally, without any restriction as to the causes which have led to them, but the insurance offices have a right to be indemnified by workmen who have been convicted of deliberately causing the accident or of wilful disobedience to rules.

Scale of Compensation.

(a) *Injuries not resulting in death.*

The compensation consists of—

(1) In cases of temporary disablement of more than ten days' duration, a pension beginning on the sixth day after the accident, and consisting of half the amount by which the daily wage has been reduced in consequence of the accident. This pension does not continue beyond the 360th day after the accident.

(2) In cases of permanent disablement, a capital sum equal to five times the amount by which the yearly earnings are reduced in consequence of the accident. If the disablement is complete the compensation may not be less than 1500 francs, and is to be expended in the purchase of a life annuity in some insurance office to be named by the injured person. From the sixth day after the accident until the extent of its consequences can be determined, the insurance office makes a provisional allowance on the scale for temporary disablement, or, in the case of workmen employed on task wages, amounting to 1 franc a day. The provisional payment is taken into consideration in making the final award.

(b) *Injuries resulting in death.*

The compensation consists of a capital sum equal to four times the yearly earnings, and is distributed among ascendants and descendants, husband or wife, illegitimate children, and brothers and sisters under age, according to the rules laid down for the distribution of the property of deceased persons. If there are no persons to take under these provisions the amount of the compensation is paid to the special fund spoken of below.

The daily wage is calculated by dividing the earnings of the injured person in the five weeks preceding the accident by the number of days worked during that period. If he is employed on task work the daily wage is based upon the earnings of other workmen employed under the same conditions at the same time and place. The yearly earnings

are taken at three hundred times the daily wage, but may not exceed 1800 francs.

The earnings of apprentices are taken as equal to the lowest earnings of workmen employed in the same kind of work.

Alienation of Compensation.

The capital sums or pensions awarded cannot be alienated or taken in execution.

Period of Limitations.

This is one year from the date of the accident.

Contracting Out.

This is forbidden.

Organization of the Insurance.

The insurance required by the law is to be effected, in the case of works carried out directly or indirectly by the State, the provinces, or the communes, with the national insurance office founded by the law of July 8, 1883. Other employers may insure either with the national office or with insurance companies authorized to carry on business in Italy, but in the latter case the employer remains liable in case the insurance company becomes insolvent.

Workmen in the employ of the State need not be insured if compensation in case of accident is already secured to them under the existing law.

In two cases the employers are permitted to be their own insurers—

(1) If they found provident funds on approved lines, offering compensation to the workmen on a scale not less liberal than that provided by the law, and furnishing the security demanded of ordinary insurance offices.

(2) If they are members of mutual insurance associations founded upon a basis approved by the Minister of Trade and Agriculture. Any such association must cover not less than 4000 workmen and must deposit security to the amount of 10 lire per person employed. The fund thus created is to be increased yearly by one-half of the amount of the premiums which the national office would have charged for effecting the insurance undertaken by the association. The committee of the Chamber considered this system of mutual associations to be the most satisfactory form of accident insurance, as well from the point of view of economy as from that of the prevention

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and mitigation of accidents. These associations are to take over the duties and liabilities of their members, and are empowered to recover the contributions levied upon them by means of the machinery employed for the collection of taxes.

The insurance offices have a remedy over against the employer where the accident is due to the deliberate act of, or to the disregard of statutory provisions and regulations by the employer or his foremen, and the injured person can also recover the difference between the compensation he receives under the bill and the damages to which he would have been entitled under the general law.

In order to secure the provisions of the law being properly carried out, employers must, within one month of its coming into operation, declare the character of their businesses and the number of men employed by them to the prefect of the province. They have a further period of one month for effecting the insurance, the completion of which must be reported within fifteen days. Employers commencing business must make the declaration and effect the insurance within one month. All changes in the number of workmen employed or insured must be reported within fifteen days.

Prevention of Accidents.

Special measures are to be taken for this purpose in all dangerous trades, as defined by a decree to be issued within four months of the commencement of the Act. Whether the industry is to be considered dangerous depends upon the nature of the work or of the material and plant employed, and, in cases where the risk is slight, upon the number of workmen employed. But the bill lays down expressly that work in mines and quarries, in arsenals and ship-building yards, building operations, and the manufactory of explosives, are dangerous, as well as all industries where motive power is used and more than ten workmen are employed.

A board of labour is to be formed, under the presidency of the Minister of Trade and Agriculture, consisting of two senators and two deputies chosen by the Houses themselves, and eight experts nominated by the Minister. The head of the provident office, the senior factory inspector, and the president of the national insurance office are to have a seat, but not a vote, on the board.

Accident-prevention regulations for the various trades and industries are to be drawn up and approved by the board of labour, the initiative as to this being left to the employers. Special regulations may also be made for particular establishments. The execution of the law is to be supervised by a body of inspectors, who are to have free

access to all factories and workshops, abuse of information thus acquired by them being guarded against by heavy penalties. Penalties are provided for disobedience to the regulations on the part of the employers. All industrial accidents, whether occurring in establishments subject to the law or not, are to be reported within two days.

XIV. HOLLAND.

In this country the law of employers' liability now in force is to be found in ss. 1401 to 1403 of the Civil Code, which are practically identical with those of the French Code quoted above. A special provision for seamen is to be found in s. 423 of the Commercial Code, which enacts that in case of illness during the voyage, or injury sustained in the working of the ship, the seaman retains his claim for wages, and has a right to free maintenance and treatment, and that he is entitled to compensation in the event of the illness or injury resulting in permanent disablement. It appears not to be settled whether the right to compensation under this section extends to the relatives of a deceased workman. At any rate, the amount awarded is usually trifling, as appears from a case where a large steamship company escaped with a payment of less than £25 among the widow and nine children of a seaman in their employ who had been killed by a fall from aloft.

In 1891 the Minister for Trade decided that clauses were to be inserted in all contracts for works to be carried out for the Government, binding the contractor to insure his workmen against accidents during the work. According to the form of contract adopted, the benefit of the insurance was to extend to all foremen and workmen employed directly or indirectly by the contractor. The compensation in case of death or complete permanent disablement must equal a year's pay, and in case of partial disablement be proportionately less; during temporary disablement three-fifths of the wages were to be paid. The insurance must be effected with some insurance office, but the employer remained personally liable for the payment of the compensation. Similar clauses have been adopted by most of the provincial governments, the largest towns, and by many private persons.

The Labour Commission appointed in 1890 reported in 1894 in favour of the compulsory insurance of workmen by their employers; they recommended that a State office should be created, but did not require that the insurance should be effected with it exclusively. Their suggestions have not been carried into law.

HOLLAND. The practice of insurance against accidents in factories appears to be pretty general. According to a report drawn up by the labour inspectors for the year 1894, and dealing with the north-eastern portion of Holland, out of some 14,000 workmen employed in factories within the district, upwards of 90 per cent. were insured in some form or other against accidents. In many cases the workmen contributed to the insurance, and often the compensation only included sick pay and medical attendance.

XV. DENMARK.

In this country the employer is only responsible for injuries caused to his workmen, if it is proved that they are due to his own negligence, or to that of his immediate agents.

Various proposals have been made for systems of accident insurance; in 1890 a bill establishing a compulsory system was passed by the Landsthing, and sent up to the Folkething, but did not become law. The proposed system was generally on German lines, but the pensions to be given in case of death were much smaller. It was to apply to industrial workers, agricultural labourers, sailors, and fishermen. The employers and workmen were to be represented on the boards of arbitration to which disputes were to be referred, but they were not to take any part in the administration of the insurance, which was undertaken by Government officials.

XVI. SWEDEN.

The common law of Sweden on the subject of employers' liability is the same as that of Norway and Denmark. Railway companies are, under the provisions of an Act of March 12, 1886, liable to compensate persons killed or injured in their service, provided that the accident was not due to the disobedience or gross negligence of the person injured. The Labour Commission of 1884 considered the question of accident insurance, and drafted two bills, which were considered by the Riksdag in 1890, but did not become law. These bills proposed a system of insurance very much on the lines of German law, which was to extend to railways, tramways, the loading and discharging of ships, mines and navvies' work, forges, blast furnaces, the timber trade, the building trades, factories, and all Swedish ships of more than thirty tons registered tonnage. The scale of compensation was

to be much as in Germany, payment to begin sixty days after the accident. *SWEDEN.*

The insurance was to be effected with a state insurance office, all the premiums being paid by the employers, the different industries being rated according to their different perils. Inquiry was to be made into all accidents by a body on which the employer, the injured person, and the local office of the state insurance office were to be represented. The amount of the compensation was to be assessed by the insurance office, subject to an appeal to the ordinary Courts.

Another Commission was appointed in 1891, and reported in 1893. This Commission prepared a bill which proposed a system of insurance against incapacity for work, whether due to accident or old age. The burden of this was to be borne half by the employer and half by the workmen, the payments being deducted weekly from the wages. The compensation was normally to be paid in the form of pensions. The proposed system was more allied to old age than to accident insurance, hence its provisions will not further be described here.

XVII. SPAIN.

S. 1902 of the Civil Code is equivalent to s. 1382 of the French Code. S. 1908 makes the owners of machinery responsible for injury caused by it owing to its working not being properly supervised, and a person keeping explosives is also responsible if they are not stored in a proper place. Apart from these provisions, the strict principle of the Roman law appears to be followed in Spain, and there is at present no law of employers' liability. In June, 1894, a bill on the subject was laid before the Cortes, but did not pass into law.

This bill provided for compensation to be paid by employers in the case of injuries to workmen due to the power or motion of machinery, or to the condition of the place in which the work was carried on, and also in the case of injuries owing to the materials handled or manufactured being dangerous or injurious to health. The scale of compensation to be paid was as follows:—

If the injury resulted in death, the nursing and funeral expenses, together with—

If deceased left a widow, and children under eighteen, 1200–2000 pesetas.

If deceased left children under eighteen, and no widow, 1000–1500 pesetas.

SPAIN.

If deceased left a widow and no children, 500 pesetas.

If deceased left no widow or children, but parents over sixty years of age and in need of support, 500 pesetas.

If the injury was not fatal, nursing and medical expenses, together with—

In case of temporary disablement, wages during the period of disablement and an extra week.

In case of permanent disablement for particular kinds of work, but not for work generally, 200–500 pesetas.

In case of permanent total disablement, 1000–1500 pesetas.

The amount of the compensation was to be settled by a jury presided over by the mayor of the place where the accident occurred, and consisting of a lawyer, an engineer, and a manufacturer or landowner, according as the accident occurred in a factory or on some building work. A member of the municipal council, and two workmen chosen by those working with the injured person, were also to be members. The decision of this jury was not subject to any appeal on the merits.

XVIII. PORTUGAL.

The Portuguese law of liability is contained in s. 2398 of the Civil Code. According to this section, persons carrying on building operations, whether on their own account or on account of others, manufacturers, traders, farmers, persons engaged in building roads or railways or executing other public works, and persons engaged in the transport of passengers by land or sea, are responsible for injuries caused by their own default or by that of their agents, through non-compliance with regulations prescribed for their respective occupations, or through neglect to employ proper and usual precautions.

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LAND REGISTRATION IN CENTRAL EUROPE.

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The general characteristics of the Australian "Torrens" system of land transfer by registration of title have been fairly familiar to the English legal world for a good many years past. With regard to that system it may be said, without fear of serious contradiction, that it has entirely justified—perhaps more than justified—the utmost expectations of its founders, and has proved in every country in which it has as yet been adopted, a safer, cheaper, quicker, and more generally convenient method of dealing with land than the system which it superseded, which was the present ordinary English system of conveyancing, *plus* registration of deeds. It is now in vogue in all the Australian Colonies, and in New Zealand, in nearly the whole of the Canadian Dominion, and in the States of Illinois, Ohio, and California (U.S.A.), besides other places of minor importance. This much having been matter of common knowledge for many years, the advocates of a similar reform in this country have naturally made the most of the analogy. But they have hitherto been met by the objection—which may be admitted to have some force—that the analogy is not complete. England is an old country, Australia is a new one; here we have complicated transactions, long titles, frequent settlements, dense population—there transactions are comparatively simple, most titles are founded on recent Crown grants, settlements are rare, and the population is sufficiently small to admit of most people's identity being securely established.

It is mainly with a view to furnish a reply to this criticism that I desire in this article to draw attention to the results of my late official inquiry[1] into the registration systems of Germany and Austria-Hungary,

[1] *General and Detailed Reports of the Assistant Registrar of the Land Registry on the Systems of Registration of Title now in operation in Germany and Austria-Hungary.* (Parl. Pap., 1896. C. 8139. Price 1*s.* 7*d.*) Also *General Report*, etc., separately published Parl. Pap., 1896. C. 8272. Price 1½*d.*

as to which countries, however much they may differ from England in other respects, it cannot be argued that their transactions are less complicated or their titles less ancient, while as to settlements and population, though these are respectively neither so frequent or dense as our own, yet (as will shortly appear) their settlements are frequent enough and involved enough to furnish a trustworthy index of the power of the registry system to deal with them; and the population both in town and country is sufficiently great to render personal identification no more secure than it would be in this country.

Both the Australian and the German and Austrian system of land registration have also been the subject of very careful study in France of late years, and it appears, from the published proceedings of a Government Commission appointed in 1891[1] to study the reform of the Cadaster and the Establishment of Registers of Title, that a similar system is likely to be instituted in that country before very long, in substitution for the present system of registration of deeds. I may, perhaps, take an opportunity of reverting to this Commission on some future occasion, when their final report appears.

Furnished with the highest introductions and facilities, I was enabled to inspect the German and Austrian systems in their actual daily operation, under every variety of circumstance and condition likely to be met with—possibly even under greater varieties than will ever be met with—in England. I saw it as applied to estates of various sizes, values, characters, and situations, and subject to numerous diverse legal, commercial, and political incidents. In some of the districts observed titles had been registered from time immemorial; in others they had been partially registered for a long period; while in others the system is totally new and unaccustomed, and has been preceded by no registration at all.

Among the registers shown to me were those, for instance, of such great estates as the ancestral domains of the Bohemian nobility (among whom are to be found some of the largest landowners in Europe), subject to the strictest entails, carrying political privileges of the highest importance, and specially registered in immense separate volumes in the provincial capital; and also, by way of contrast, those of the tiny subdivisions of the peasant proprietors of the Rhine Provinces, where the principles and practice of the Code Napoleon are still deeply rooted in the customs and feelings of the people. I saw titles, on the one hand, of rapidly developing building properties in the suburbs of Berlin, with their villa residences and restrictive covenants, and, on the other, of remote Silesian manors with their tenant farmers, antique rights of

[1] "Commission Extraparlementaire du Cadastre, Ministère des Finances" (decret du 30 Mai, 1891).

common, and commuted rents and services, dating from feudal times. The system is exhibited in these countries as applied to vast featureless plains like the corn-growing regions of Hungary, to the busy mining and industrial districts of Saxony, and the Black Country of Germany close to the Russian frontier, as well as to the picturesque Alpine hamlets and pastures—with their innumerable interdependent rights of way, water, and other complicated easements—to be found in Styria and the Saltzkammergut; it comprehends the intricacies of cellars and flats, courts and passages, of the Jews' quarter of the City of Prague, as well as ministering to the simple needs of a quiet agricultural district in Brandenburg; it deals with mortgages on first-class properties, involving hundreds of thousands of pounds, and subject to the most complicated subsequent dealings by way of transfer, alteration, sub-division, and collateral security, as well as with rows of petty charges on diminutive shares in inconsiderable estates; it includes alike great cities where values are measured almost by the square inch, and trackless wastes and bare mountains of scarcely any value at all.

Over the whole of this vast and diversified tract—embracing an area more than seven times the size of England and Wales—systems of registration of title differing in no essential particular from the systems established under the Torrens Acts in Australia, and partially established under the Land Registry Acts in England and Ireland, have been in almost universal operation for a considerable period, amounting in the principal Austrian provinces to upwards of eighty years, and in certain places dating from a much more remote epoch. The type of registration followed bears throughout a remarkable similarity to that of Lord Westbury's Act of 1862—every kind of interest in land being capable of registration, resulting, not unfrequently, in the formation of a somewhat involved and complicated record. It will be remembered by those familiar with the subject, that Lord Cairns's Land Transfer Act of 1875, by excluding certain minor interests from the register, provided a remedy for what was deemed a defect in the 1862 Act in regard to this.

Notwithstanding this liability to become complicated, the Continental registers appeared, according to every test by which their practical efficiency could be tried, to be giving complete satisfaction, and to enable landowners, large and small, habitually to transact sales and mortgages with an ease, rapidity, cheapness, and security which, to persons accustomed only to the conditions of land transactions in this country, will appear almost incredible.

The mode of keeping the registers, and particulars as to costs and practice generally, will be found in my detailed report. In the following pages I shall endeavour to give a general notion of the historical and

legislative aspects of the system, and to draw attention to features in the general conditions of land ownership in Central Europe in which the closest analogy to the subsisting conditions in this country is observable.

Origin of the System.

In many places on the Continent, registration of title in some form or other is of an almost unknown antiquity.

The public land registers of the Hanseatic towns of Hamburg, Lubeck, and Bremen have long been quoted in this country[1] as ancient examples of registers of title. To these, Cologne, Hanover, and Munich have been added by a recent authority,[2] and from register books shown me in Vienna, Budapest, Prague, and several other places, it appeared that the number of examples of registers of title of great antiquity in various parts of Germany and Austro-Hungary might be indefinitely multiplied. In Vienna, for instance, I saw registers going back to 1368, in Prague to 1377, in Munich to 1440, and in a country district in Upper Austria to 1547, while in Budapest I saw the volume of the land register which was begun, evidently as a matter of course, the first year after the city was delivered from the Turks. Continental opinion points to the Bohemian "Landtafeln"—which existed in Prague at least as far back as the twelfth century, and comprised the nobles' estates for the whole of Bohemia, which is about twice the size of Wales—as the earliest examples of the systematic registration of title to land on a large scale.

Speaking generally, the history of land and mortgage registration appears to follow a fairly uniform course of development, divisible into three main periods.

The first period, illustrated by the entries in the oldest books in Vienna and Prague, in the Hamburg registers (apparently), and by our own manorial Court rolls, is the very elementary one where parties appear before a public or quasi-public authority, who makes in his books a short note of the substance and effect of each transaction.

In the second period, when transactions become more complicated, and are embodied in written instruments, the public register contains copies or memorials of those instruments, without any attempt to summarize their effect. This period is illustrated by the less ancient records shown me in various continental cities, by our own Middlesex

[1] "Essay on the Transfer of Land by Registration," by Sir Robert Torrens, published by the Cobden Club.

[2] "A Summary of the Law of Land and Mortgage Registration in the British Empire and Foreign Countries," 1895, by Mr. R. Burnet Morris, p. 103 (Clowes & Sons).

and Yorkshire registries, the deed registries of the United States and many of our own Colonies, and by the mortgage registers of numerous foreign countries, such as France, Belgium, Italy, Spain, and the South American States.

The third period (registration of title) comes in when the multiplicity of transactions by deed, whether accompanied by registration or not, renders it necessary to collect the transactions relating to separate estates under separate headings, to keep an accurate account of the different parcels of which each estate is composed, and to summarize authoritatively the effect of the various instruments by which the title is from time to time built up. The German and Austro-Hungarian registers illustrate this stage, and the registers kept under Lord Westbury's Land Registry Act of 1862 and under the Colonial Torrens Acts.[1] A further development of this system is to be found in the Land Transfer Act, 1875, which ensures a greater degree of simplicity for the register, by excluding a number of minor matters from it, and creating a statutory proprietor with specially defined powers of transferring and charging the land.

The third of the above-mentioned stages was entered upon in Prussia as long ago as 1783, having already prevailed in certain parts from the beginning of the eighteenth century. But the law of 1783 was very slowly carried out, and had to be specially expedited in 1839. The system was not completely perfected till the law of 1872, at present in force. The latter law, however, introduced no serious change into the formal mode of keeping the registers, and the old books are in many places still in use. In Berlin I saw registers still in use dating from the beginning of the present century. In a country town in Silesia I saw books beginning in 1818, with connected notes of the prior titles going back, in one instance, to 1663, with antecedent information up to 1588. In Nauen, a small town in Brandenburg, the older books, dating back even to 1760 and 1770, had been kept in the same way as now, except that, there being in those times no Cadaster, the description of the land was a mere line of writing, written along the top of the ownership page. The changes were not very frequent in these old titles, *e.g.* an entry of original ownership in 1771 had only three changes down to the present time, viz. a sale in 1819, a death and registration of coheirs in 1855, and in 1866 a purchase by one of the coheirs of the shares of the rest. This owner is alive now, and owns the property.

[1] The Scotch register of Sasines stands half way between the second and third periods. Essentially it is a register of deeds, but collected and summarized in a manner not far short of registration of title.

In Austria the books now in use were nearly all drawn up as recently as 1875 to 1885, under a general order for the reorganization of the registers made in 1873, on the completion of the revision of the cadaster. But all the three stages of registration above noted were abundantly illustrated by the old books and records to be found in every office in the custody of the registry officials.

Ancient Register Books.

In the Director's room of the Land Registry at Vienna I was shown the old registers from which the present ones were made. They go back in an almost unbroken succession to the middle ages, the oldest book being for the year 1368. There are 1123 volumes of these altogether—variously kept—different shapes and sizes, but well bound, in good preservation, and perfectly legible. One of the oldest was a "book of sales" for the year 1420—folio size, of thick white paper, 430 pages for the year, divided into alphabetical divisions, each having a handsome coloured capital at its commencement. The alphabetical order followed was that of the Christian names of the proprietors. This book evidently belonged to the first stage of registration. Each entry consisted of about six lines of old German writing, stating that so and so had become the owner of such and such a house by virtue of a specified deed or transaction. The entries were cancelled by black lines across. Mortgage registers were contained in other books.

The director has a separate inventory of all the old books, some of the more recent of which are not unfrequently consulted in regard to easements and subsidiary rights. Up to 1876 the registers were kept in three separate volumes, some of which I was shown: (1) The "Urbarium," containing short verbal descriptions of the land comprised in each title, and a reference to the next volume; (2) the "Gewährbuch," or ownership register, which referred also to (3) the "Satzbuch," or register of incumbrances. The entries in the books were similar to those now made in the present registers—the description of land only being now more exact owing to the references always inserted to the cadastral numbers of the parcels. It may be remarked as a coincidence that when the English Land Registry Act of 1862 was first started the registers were divided into three separate volumes on precisely the same plan as these old Vienna registers, but they were afterwards bound together in one, which was found much more convenient.

At Ischl, as in Vienna, there were, in a small room by themselves, the old registers of the district, or of the several communities and lordships of which it formerly consisted, very variously kept and bound,

but mainly in good condition and quite legible. I took one down—it was for St. Wolfgang, on the lake of that name, about ten miles distant, for the years 1581 to 1604. It contained 281 pages, about demy size, thick paper, and was bound in white vellum, ornamentally stamped on the sides. These registers belonged to the first or elementary period of registration. The entries consisted of short notes of all sorts of transactions, generally that "by deed of such a date so and so has sold such and such lands for so much to so and so," or as the case might be. The forms of entries varied very much in the different registers in former times. Here, too, was an alphabetical index of names according to the first letters of the Christian names of the parties, but as each year only filled on an average fourteen pages, with about two entries a page, this index was no doubt sufficient for its purpose. Another register of 1547, for the same place, was bound in a sheet of parchment taken from a Church Psalter, in large black and red lettering, with music and pointing all over it.

The town registers of Prague go back to the year 1377. The entries in a book shown me of this date were in Latin, and difficult to decipher, but they appeared to belong to the above-mentioned earliest period of registration, and to be short notes, three or four lines each, made by a magistrate, of sales, which probably took place without documents in his presence—thus: "J. S. Emit domum," followed by the name and situation of the house, vendor's name, price and date. Later—1588, for instance—the books seem to have reached the second or middle period of registration. They contain full-length copies of deeds in Latin, German, or Bohemian, and it was not apparently till the eighteenth century that the third stage was reached, and the deeds were collected under the several titles, or a definite entry of an owner, as such, was made. The last revision of the books previous to the late one in 1876-1886 was about 1800, and was made from the existing records.

As to the "Landtafeln," or registers of ancestral estates of the Bohemian nobility, the oldest of these, going back to the twelfth century, were unfortunately burned in a fire in 1541, only one volume being saved, and that one being only two years previous to the fire in date. This book, and several others of the older Landtafeln shown me, were full-length copies of deeds—not registers of ownership.

I was shown also the old registers in Budapest dating from the year 1656, the year after the expulsion of the Turks. These were at first full-length copies of deeds relating to land ownership as well as mortgages. They were on paper, but in good condition and quite legible, mostly in Latin or German (Hungarian is now exclusively used in the

land registers, as well as in business in the city). In the last century the third stage of registration was entered upon—the deeds being separated into particular titles for each estate, which was kept, down to 1840, in three separate books, as formerly in Vienna, viz. (1) descriptions of lands, (2) ownership, and (3) mortgages. But these entries were still merely transcripts of deeds, not exactly a register of title. In 1840 the three were collected in one book in separate columns, and the practice of entering an *owner*, as such, began. But the legal effect of this entry does not appear to have been conclusive as evidence of title. In 1849 further improvements were made, and a fresh set of registers started. The present system dates from 1855, in which year the entry of ownership in the register was made conclusive evidence of title. I was shown specimens of all the above modes of registration.

In the land registry at Munich the old registers (for the town only) appeared to have been kept on a property basis—usually the third stage of registration—from a very early period. I saw one of the oldest, which was for the year 1440. The entries were not very easy to read, owing to the antique character, but they appeared to have been arranged on the principle of assigning a separate page or pages to each property, with a description of the land at the head, and with notes of dealings following.

The complete Introduction of the System in modern Times.

The system, as now carried out, is of gradual growth; the main stages of its development in the principal countries concerned are as follows:—

Austria.—As already stated, the most ancient land registers known in the Austrian Empire were those in the former kingdom of Bohemia, where the system of registration of ownership dates from the twelfth century, under the name of Landtafeln. The system had also existed from a very early period in various other parts of the Austrian Empire. In the eighteenth century many improvements were introduced into the existing systems, culminating in legislation in 1794.

In 1811 the Austrian Civil Code, adopting the existing principles of the local laws, definitely enacted (ss. 321, 322, and 431–446) that in all districts where registers existed, they should be absolute evidence of title as far as concerned third parties, both as to ownership of real property, easements, or servitudes, and as to mortgages.

During the present century registers were started in many fresh districts, and existing registers were subjected to revision. But absolute uniformity was not obtained till 1871, when the Imperial

Parliament formulated a general land registration law, which law the various provincial parliaments were to be at liberty to adopt as and when they might desire to do so. These parliaments, with the exception next noted, proceeded (in the years 1873, 1874, and 1875—Dalmatia not till 1881) to adopt the new law, which provides for the remodelling of old registers and for the formation of registers where none exist already. The old registers were all accordingly revised and rewritten between the years 1875 and 1885, and the system was made uniform and practically universal in all the principal provinces of the Empire but one, namely, the Tyrol and its extreme western district, the Vorarlberg.

In the Tyrol the circumstances were for a long time unfavourable to the adoption of the registration law. No registers of title had existed previously, but only registers of deeds. The people are extremely conservative, there is very little sale or purchase of land—properties remaining in the same families for a great length of time—and there is no desire to attract capital into the country by increasing facilities for mortgaging. Further, the idea of ownership being in any way dependent upon the act of an official, instead of resting entirely on the acts of the landowner alone, appeared to the people to be disadvantageous to the landowner, and in favour of strangers. The large number of small properties, and the complicated rights and easements over adjoining properties, which the mountainous nature of the district tends to multiply, also appeared to create a further impediment. But in the year 1895, by 30 votes to 11, the local parliament adopted the general land registry law, provided the registration of rights of way and water could be excepted from the necessity of registration. This exception requires the assent of the Reichsrath; the Upper House had already given it at the time of my inquiry, and I understand that the Lower House has given it since.

It is stated that the objections felt by the Tyrolese to the system were mainly overcome by the provisions of the law requiring the execution of every deed to be attested by a notary public, or a judge, and by the rule that a judge must settle every entry in the register.

The extreme western district of the Vorarlberg will then be the only remaining fraction of the whole Austrian Empire in which the system is not in force. A bill is (or lately was) pending in the local parliament there for its adoption.

Baden.—The next State of any magnitude to adopt registration of title appears to have been Baden, where the system dates from the year 1809, when it was incorporated into the general enactment

called the *Badisches Landrecht*, passed in that year. Small ownership is the rule in Baden, large estates are rare.

Saxony.—Saxony, in 1843, passed a law instituting registers of title, which registers have been kept up, without material revision or alteration, to the present day. The three main characteristics of the law of 1842 are—(1) The public authority attached to registration, making registration an absolute proof of title; (2) the special folium started in the register for each separate estate; and (3) that priority of mortgages and conveyances is determined by registration, and that no "real" right is obtainable except by registration—with certain exceptions, the most important of which is inheritance. No registers of title had previously existed. Saxony is the principal industrial state of Germany.

Hungary.—The present registers in Hungary are kept under an order made in 1855 during the temporary Austrian dominion (1849–1866), with an important subsequent improvement in regard to the descriptions of land, made by a Hungarian law of 1886. But the cardinal principle of registration of title, viz. the validity of the register as evidence of title on sales and mortgages, and priority of incumbrances, and other deeds according to priority of registration, was established by the earlier law.

Prussia.—In the old kingdom of Prussia, as in Austria, land or mortgage registers, kept substantially in the same form as at present, have been in use for a long period, their original formation as mortgage registers for the whole kingdom dating from a law of 1783. But it was not till May, 1872, that the law was passed which constituted them land registers of title in the full sense of the word, and provided for their extension into all provinces where they had not before existed. The leading principles are very concisely enacted at the commencement (ss. 1 to 11, quoted below, p. 137).

Up to 1872 the Prussian registers had kept accurate records of the estates and of the mortgages, and were the only legal evidence of title in regard to these latter. There was also an ownership column in which an owner who desired to mortgage was obliged to be registered. But apart from mortgages, the registered owner, as such, had no better right to the land than any one else, and this part of the record was, therefore, in an untrustworthy condition. The law of 1872 provided for the careful revision of the ownership record, and enacted that in future the register should be absolute evidence of title for all purposes. So little change, however, was made in the form and contents of the register, that most of the books now in use were formed before 1872, and in some cases date back to the beginning of the century.

The formation of registers where none before existed was at the same time undertaken, and is still in progress in the Rhine Provinces. Particulars as to the present practice in the formation of registers, as now going on in these provinces, are given in my detailed report.[1]

Bavaria and Wurtemberg.—The only German States of the first rank remaining unaccounted for are Bavaria and Wurtemberg. These have registration systems similar to the Prussian system before the law of 1872; practically very like registration of title, but theoretically registration of mortgages only. The appearance of the registers and the mode of keeping them is almost the same as if they were registers of title; their effect is limited to mortgage purposes only. The city of Munich has a register of title, however, dating from a very early period. In Wurtemberg, a purchaser for value obtains priority by registration, but he is not given a good title against all the world, as he is under the Prussian law of 1872, and indeed under every system of registration of title in the exact sense of that term. Both these systems are of long standing.

Other German States.—The smaller German States have also for the most part adopted the same system. The following are the dates of their adoption, as given in Mr. Morris's book already referred to (p. 116):—

Sondershausen	1851
Altenberg	1852
The towns of the two Mecklenburgs	1857
Reuss jung	1858
Meiningen	1862
Reuss alt	1873
Oldenburg	1876
Coburg-Gotha	1877
Anhalt	1877
Brunswick	1878
Lübeck (amended)	1879
Waldeck	1881
Lippe Detmold	1882
Schwarzberg Sondershausen	1882
Schaumberg Lippe	1884
Alsace-Lorraine	1891

Hesse (a country of small proprietors) appears to have had a very complete system of registration of title for a long period. It is carried out in the communes—*i.e.* in almost every village—under the control of the district Courts of first instance, at exceedingly low costs. *See* Sir R. Morier's account in the Parliamentary Report on Land Tenures in Europe, 1869, Part II. pp. 207–214.

The remaining States of the German Empire (as to which precise information has not been obtained) are Saxe-Weimar, Schwarzberg

[1] Pages 57 to 60 and 199.

Rudolstadt, and the country districts of the two Mecklenburgs. The area of these States is less than one-twenty-sixth, and their population less than one-fiftieth, of the total area and population of the Empire. In all probability it would appear on inquiry that the systems in vogue in these States are of the Bavarian and Wurtemberg type.

The Formation of Land Registers.

The manner in which the system has been introduced into those parts of the country (and they were many) where no registers, or only incomplete registers, formerly existed, is naturally of the highest interest and importance at the present juncture in England.

A great variety of circumstances antecedent to the present system existed in different parts of the German and Austrian Empires. In some places—Bohemia, for instance, generally—many of the principal cities, such as Vienna and Munich—and numerous isolated manors and districts in the country—registers of ownership have existed from time immemorial, while in others, such as the Rhine Provinces, Hanover, and some of the remoter Austrian Provinces, *e.g.* Bukowina and Dalmatia, ownership of land had never been registered at all, until the present system was introduced, not many years ago—though even here there was usually some kind of registration of mortgages. Between these extremes a great variety of mixed systems prevailed, and during the latter half of the present century there has been nearly everywhere the Cadaster, or Government land-tax register, which, though neither complete nor authoritative as to title, showed at any rate the person for the time being in ostensible possession of the land and accountable for land tax.

Registration of title was made universal for the then Austrian Empire in 1811; it was adopted in Saxony in 1843; in Hungary in 1849–56; and in Prussia (in its present form) in 1872. The system was in all cases gradually applied—province by province, district by district, commune by commune—under the general control of the Ministry of Justice and under the local control of the provincial Courts of Appeal. All inquiries were made at the Government expense, but this was not heavy. Very little documentary evidence of title was required, considerable reliance being placed on the local notices and advertisements and information obtained from the land-tax (Cadaster) books and local authorities. In Prussia, a very low scale of fees, paid on first registrations, reimbursed the Government for all outlay.

Only in a few very remote and primitive districts have errors been at all noticeable, and then they appear to have been rather due to misapprehension of the motives and objects of the inquiry than to

intentional fraud. In the Rhine Provinces, where registers are still in course of formation, where the sub-division of the soil is so minute that there are as many landowners as in the whole of England and Wales, and where only registers of mortgage deeds formerly existed, no instance of intentional fraud has occurred in the returns sent in by the proprietors. Disputes are few, and chiefly relate to boundaries, which are, however, in nearly all cases amicably settled by a visit to the ground. Similar conditions a few years ago in Hanover, with the additional embarrassing element of a very prevalent system of verbal conveyances (which were duly tried), have led to equally satisfactory results, no instances of erroneous registrations having occurred. This, indeed, has been the experience throughout Germany, but these two districts are specially cited here because, owing to the absence of preceding registers, they form a closer parallel to the case of England and Wales than other districts where a tolerably complete system of land registration was already in existence when the present registers were formed.

It will be remembered that in the English Land Transfer Bills of late years (including the Bill now pending) it has been proposed to introduce registration of title by requiring the purchaser of land on every next sale to register what is called a *possessory* title in a local land registry established for the purpose. No formal evidence of title would be required—only the owner's statutory declaration, the ordnance map, and perhaps the last conveyance, if any. The effect of the registration would be to prevent future doubts or complications of title, but it would have no retrospective effect. In course of time a title so registered would become saleable on the faith of the register alone. Some of the Bills also contained a scheme for making these possessory titles absolute at the end of five years, with public notice and a certain amount of *prima facie* evidence, but without a regular official examination of title. Persons injured by errors were to be compensated by the State, which was to repay itself out of an insurance fund formed for the purpose, on the same model as in the case of the Australian Torrens Acts. The compulsory principle was to be applied gradually to different districts to be named from time to time by the Privy Council.

Each method has its advantages and its drawbacks. A possible drawback of the Continental method as applied to England might be that a number of persons might be put to a certain amount of trouble, and perhaps expense, who had no intention of dealing with their property by sale or mortgage, and who, therefore, would gain no immediate benefit by the change. Disputes might also arise, which would otherwise be allowed to slumber. The advantage of it is that by registering an entire district or parish at once the work is done on the

whole at a mere fraction of the cost incurred by registering it piece-meal; absolute titles can be granted at once, and on very little documentary proof, owing to the notoriety of the proceedings, and the inconveniences attending the transitional stage are limited to a comparatively short period.

Large Estates and Settlements.

With regard to the sizes and values of estates and settlements, there is a prevalent impression among us that the Continent is almost entirely given over to small ownership, and that complications and settlements do not occur there.

Although in most parts of the Continent small holdings and peasant proprietors are to be met with to an extent out of all proportion to that prevailing in England at the present day, yet, on the other hand, there are to be found in almost all parts of Germany, Austria, and Hungary, estates, which for size, value, and continuity of ownership, are second to none in the world.

The greatest preponderance of large estates is undoubtedly to be found in the Austrian Empire. In Bohemia (one of the largest divisions of the Austrian Monarchy), the greater part of the soil is in the hands of large proprietors, holding estates of on an average 10,000 acres of arable, and 6000 to 10,000 acres of forest land. Many areas are over 60,000 acres. In the flatter parts of Lower Austria similar large properties prevail, and in Galicia three-fifths of the area is said to be held in estates of from 1000 to 20,000 acres. In Hungary, also, the estates of the nobility are of very large extent. In the German Empire, the extreme eastern provinces of Posen and Silesia would probably be found to supply the largest proportion of considerable estates. In the former, the average area of the larger class of property is over 2000 acres, in the latter, over 1600. In Pomerania and East and West Prussia (being the northern provinces along the Baltic to the Russian frontier) and Brandenburg (the country about Berlin), the percentage of fair-sized properties is also considerable.

The "South German" States, Bavaria, Wurtemberg, and Baden, which are almost entirely given over to peasant proprietorship, as also Westphalia, Hesse, Saxe-Coburg-Gotha, and, most of all, the Rhine Provinces, from which English people are apt to take their impressions of German institutions, form hardly a fair average sample in this respect. In the Rhine Provinces, for instance, there are about 1000 proprietors of estates of under $3\frac{1}{2}$ acres to every German square mile. In Silesia, on the contrary, there are only 150 such proprietors to the German square mile, and in Posen only 25.

In Schleswig-Holstein, again, more than half the soil is in the hands of very considerable proprietors, with estates of from 4000 to 6000 acres apiece.

These instances are of course not exhaustive, but will perhaps suffice to remove the impression that in Germany the small proprietor is the only person whose requirements have to be seriously considered.

Up to 1849 there existed in all parts of Germany and Austria numerous manorial properties or lordships (*Herrschaften*) with the usual appurtenant advowsons, sporting rights, and other manorial incidents attached to them, including a vote for the local and Imperial Parliaments. The peasants on these estates were liable to render personal services, and to pay fines and dues, and, on the other hand, had various rights of common—turf-cutting, cattle-grazing, wood-collecting, etc., on the lords' wastes and woods. Some of these lordships also had a limited local jurisdiction in civil and criminal matters, and the administration of the local police—which they still retain. In 1848, when the personal obligations of the peasants were finally abolished, some were commuted for annual money payments, some for a capital sum advanced by the State in consideration of terminable annuities charged on the enfranchised lands; others were reduced to ordinary appurtenances, easements, and servitudes. All these are entered in the registers of the properties affected.

Most of these manorial properties in the country districts were termed *Rittergüter*, or knightly estates. The term is still retained, and confers much the same position on the owner as is held by the squire or lord of the manor in an English country parish, except that some of the *Rittergüter* are not quite so valuable as this would imply. They are more plentiful in Silesia than in any other part of North Germany.

Large estates are held in two principal varieties of ownership—*Allodial*, or freehold, and *Fidei Commiss*, or settlement. To these may be added a third, less common, and gradually in course of extinction, *Lehngut*, or estate tail, with reversion in the Crown. In Saxony, for instance, the creation of *Lehngut* has been prohibited by law since 1862. There are about sixty such estates left in the kingdom.

The exact nature of the *Fidei Commiss* and *Lehngut* varies in different districts under local laws, but the general effect of them is to render the owner a mere tenant for life of the property, and to limit the succession usually to the rule of primogeniture, either with or without provision by way of annuity for the widows and younger children of deceased proprietors. There is, as a rule, no power of barring these entails, or of selling or mortgaging the property without the consent of

all possible beneficiaries in existence and the sanction of special Courts having jurisdiction in such matters. These provisions, it may be remarked, would correspond in England more nearly to the case of parliamentary settled estates than to ordinary entails, which can be barred by the tenant in tail in possession, or by the tenant for life and tenant in tail in remainder, and which can always now be freely sold or mortgaged under statutory or other powers, the purchase money being paid to trustees for re-investment in land.

But the Continental entails, besides being stricter than the English, are also more difficult to create. In England any landowner can create an entail by deed or will, but on the Continent the sanction of the legislature is always required. This was not always the case. In the last century they could be created by deed or will. The result of the present law is that a larger number of considerable estates are held in freehold than is the case with us.

For a very long period (in some parts—Bohemia, for instance—from time immemorial) books, called "Landtafeln," have been kept in the capitals of the provinces, recording changes of ownership occurring in these estates. Now that the ownership has been assimilated to that of ordinary property, the form of these registers has, of course, been also brought into accord with the general provisions of the registration law, but the books themselves continue to be kept in the provincial capitals instead of in the local registries.

Besides the strict perpetual entails above described, there is also power to create successive life interests to a limited extent by deed or will, a power which is very freely exercised, as the registers show. On the marriage of a landowner, it is not usual to make definite provision for future children; a life annuity for the wife is all that is commonly provided. The rest is left to the husband's discretion, exercised, as a rule, by will.

Another very common form of small settlement is the *Altentheil*, by which an owner, on growing old, sells the land to one of his children (not always the eldest—often the youngest), reserving for himself a right to free lodging and maintenance for life. These are specially common in peasants' properties, and are also used in some districts to evade compulsory rules of succession on death. Examples will be seen later (p. 134).

Some detailed examples of the registers of large and very valuable estates and country gentlemen's properties are given in Chapter IV. of my Report. The following are a few particulars of some of them :—

I. One of the largest estates registered in the Landtafeln in Prague comprises about 120,000 acres (49,661 hectares). It includes land of

every description—town, village, arable, pasture, woods, and wastes. It is partly managed by the owner, and partly let out to tenants. The register fills two volumes.

The same owner possesses altogether about 420,000 acres (169,622 hectares) in Bohemia alone. This is his largest estate, but two others amount to about 73,000 and 50,000 acres (29,242 and 21,556 hectares), respectively.

The description of the land, in detailed schedules, with blanks for alterations at frequent intervals, occupies the whole of the first volume —508 large folio pages.

The estate lies in ninety-seven different communes and ten different land registry districts. The various parcels are ranged according to their communes, and the communes are ranged according to their registry-districts—alphabetically in each case, except that the commune which gives its name to the whole estate is placed first of all. The schedules do not name the parcels, but give only the Cadastral number and description—house, meadow, forest, etc. After each commune a page or two is left for alterations and additions. A large number of blank pages are left in reserve at the end of the book. The plans of the estate are contained in 601 sheets of the Cadastral map, placed (loose) in separate paper covers for each commune. The whole lie in two drawers about six inches deep.

The second volume begins with the second part of the "description," namely, easements and servitudes, appurtenant to the estate, and alterations of parcels since registration. The servitudes are of ordinary kinds, and very numerous: rights of way, water, etc., and an immense number of small payments due from the proprietors of enfranchised lands in commutation of ancient services. There are altogether 508 entries in this portion of the register, covering 124 pages, mostly sales of portions, exchanges, and additions. No less than 163 of these have been made since November 22, 1885, when the present register was made up.

The "Ownership" portion consists of two entries only, both dated previous to the making up of the book, namely, 1804 and 1840. They merely state that the land is held subject to the provisions of certain settlements, to follow a certain title of nobility according to primogeniture. For further particulars, filed copies of the settlements can be consulted.

The "Incumbrances" register is again a very long one, beginning with a charge made in 1688 of about £30 half-yearly, in favour of a Jesuit community, now payable to the "Ex-Jesuit Fund," the property of the community having been sequestrated by the State.

A similar charge, dated 1696, is then followed by a charge for the annual distribution of certain quantities of meat, suet, butter, fish, geese, pigs, and beer, under a deed of 1596. This again is followed by others of a like kind (two since released), some of the entries being very long —more than a page of the register. Then come several pages of short entries—four or five lines each—of servitudes, rights of way, water, picking up wood, etc., which the owners of other named lands have over the estate, or particular portions of it.

Next come money charges, beginning with 1,210,000 florins (£100,000), charged in 1862, for the pension fund for the persons employed on the owner's estates, increased in 1867 by 280,000 florins (£23,000) more. These are followed by three sums of 1,000,000 florins (£83,000) each (twice since transferred to banks and partly paid off), raised in 1870 and 1871; with additional sums of 9000, 8000, and 8000 florins (£750, £666, and £666) added on one of the transfers in 1882.

After these, no less than fifty-six servitudes are added to the register in consequence of the inquiries made when the books were freshly made up in 1886, mainly rights of way.

Entries denoting corrections of errors in the making up of the register, made during the interval allowed for that purpose when the books were last made up in 1886, then follow—about half a dozen, not very important; and, finally, several servitudes (mainly rights of way) granted since the present register was started.

The register thus formed constitutes a complete record of everything affecting the estate, and though the entire number of entries is very large, yet they are so clearly headed and numbered for reference that any person accustomed to the books could find out in an hour how the title stood with regard to any particular parcel, and what consents would be necessary for a sale free from incumbrances.

The previous register of the same title, made up at the beginning of the present century, is also preserved in the registry office. On the title-page there were short notes deducing the title from 1601, with the values given when the sales occurred. The present owners acquired it by marriage in 1794, when the settlements were entered into which still regulate the succession.

II. A large estate, entered in the local registry of a country district in Posen was a *Lehngut* estate covering five German square miles—25,000 hectares (about 61,000 acres). It is strictly entailed, according to primogeniture.

The "title-page," or registered description of the land, contains sixty-nine headings, mostly large, the largest divisions being "forest lands" (by name), amounting, for instance, to 1708 hectares (4200 acres),

1802 hectares, 2007 hectares, and so on. There are also several farms, entered by name, varying from 589 hectares (1457 acres), or so, to about 50 hectares (123 acres). Also smaller parcels occasionally, and pieces added from time to time, or sold off under special authority. There are eighty-five notes of such sales since 1875, when the estate was last re-entered. The parcel affected by any sale is noted in red in the original description, so it is easy to see whether any particular parcel has been dealt with.

Parts of the property lie in other districts, but are registered in the same office with the bulk of the estate, the title being transferred, according to the owner's wishes, from the districts in which they are situate. Notifications are sent on all such transfers to the offices in whose districts the land is situated, and are there filed with reference to the titles to which the transferred portions belonged.

III. In a country office in Silesia there were some examples of *Rittergut*, or country gentlemen's, estates of considerable extent, although the great majority of the titles in the district were small and owned by peasant proprietors. Some of these *Rittergüter* were held in freehold, while others had been made the subjects of family settlements from time to time. They were entered separately in the local registry in two books. The first of these contained five properties, besides three or four others originally in the district, but now separated off into other districts. Each *Rittergut* estate has a special title-page with particulars (where known) of the earlier title prior to the formation of the present registers. In one instance the present books go back to 1818, with a connected chain of title (also noted) going back to 1663, with the prices given at various times, and with some antecedent information up to 1588. These particulars were gathered from earlier registers kept in former times in smaller districts, and in some cases by the owners themselves. These old books were collected in 1849 and placed in a central bureau in the provincial capital.

The first of these *Rittergüter* bears the name of the town and district, and comprises about 9500 hectares (23,000 acres), consisting of a mansion house and park; a considerable portion of the town, and numerous farms let on lease (usually eighteen years), and other property. It is subject to a settlement made in 1837. The estate had been previously for some time under a species of sequestration, being administered for the benefit of creditors; it was then bought by the Crown and granted back, strictly entailed, to the family to which it had formerly belonged, probably in consideration of public services.

The terms of the settlement are set out at the head of the incumbrances in the second division of the register. They are as follows :—

(1) Grant by the Crown to the original owner, followed by a list of his male and female children, and afterwards the names of two cousins.

(2) No alteration to be made without the consent of two of the successors, as well as the owner for the time being; if they do not agree, then there is an appeal to trustees and an official in the provincial capital—Breslau—called *Curator Fidei Commiss.* [These will only intervene when the proposal is for the benefit of the estate, *e.g.* to effect permanent improvements—to rebuild the mansion house, etc.]

(3) The owner may not turn the settled property into freehold, nor lease it in perpetuity,[1] nor divide it into parts, nor turn it into a money settlement.

(4) A somewhat elaborate section—specifying the order of succession; in effect an estate in tail male to the then owner, remainder in tail general (with the apparently somewhat capricious exception of daughters born after the date of the settlement, who are not to take), remainder, in tail male only, to the cousins; ultimate remainder to the State. [This ultimate remainder is uncommon, and is due to the circumstances under which the settlement originated. Where a settlement is made on the application of the family itself, the last heir can dispose of the estate.]

(5) The owner is to pay off certain heavy mortgages and charges gradually, and when this is done he is to pay a specified yearly sum to the Provincial Court of Appeal (*Oberlandesgericht*) to form a reserve fund.

(6) Each successor is to pay a specified yearly sum to the widow, to each son, and to each daughter (till marriage) of his predecessor. When the mortgages above referred to (5) are paid off these sums are to be doubled. But if the annuitants have other means, the payments may be reduced accordingly.

(7) If the owner acts contrary to the terms of the settlement he loses the property, and it is to be administered by the Provincial Court of Appeal. Similarly, if any creditor applies for a sequestration of the rents.

(8) The settlement is to stand according to its tenor, notwithstanding any alteration in the law of the land.

[1] Leases for longer terms than twenty-one years (about) are practically unknown.

Small Proprietors.

Turning to the opposite pole—the small estates—it appeared to me, from an inspection of a large number of registers in all parts, that the complications resulting from mortgages, co-ownership, and life interests, were, on the whole, greater than usually occur in England in regard to the same class of property. Against one small property in the Ischl district I found no less than forty-nine entries in the Incumbrance register, including two obligations—(1) to maintain a former owner for life, with lodging, clothing, and food, and (2) to give free lodging till marriage to one girl and two boys, probably sister and brothers of the owner. There were twelve subsisting mortgages—the highest for £70, one for £10, one for £8, one for £5—and several transfers of these. In another case, in Styria, there were eighty-two entries in the incumbrances, including ten mortgages, five created in the fifties, and apparently still subsisting; a grant of free lodging and four shillings a month to a former owner—probably the grantor's father; numerous transfers of mortgages, etc. The effect of these entries was readily deducible from the registers in less than an hour, even in the fullest cases.

The following are a few particulars as to the small holdings in the district of Gemünden, a small country town in the Eifel, between Cologne and Treves, which I visited, and where registers are in course of construction—

The district is about nine German square miles in extent—about 146 English square miles (95,040 acres)—and contains about 250,000 parcels, owned by 18,752 owners. 800 to 900 parcels change hands annually. The district is divided into 44 communes. It will thus be noticed that in this district the average parcel is not much over one-third of an acre, and the average holding a little over five acres. This is stated to be a somewhat extreme case of small ownerships.

The land is chiefly agricultural, but there are also a few mines and works; the workpeople owning their own houses to a certain extent, but many of them having their houses at a distance—Cologne or Treves, for instance, where they go for Sundays—lodging during the week in establishments built by the employers for the purpose.

The work of making the registers, owing to the unusual complexity of the holdings, has proceeded slowly. There are three officials employed upon it—a registrar and two assistants. It was begun in 1890, and it is expected that it will be finished in 1898.

Town and Suburban Titles.

In the towns every sort of complication is met with in the registers. I saw one register of a house in Prague where there were three stories and a cellar, each story being separately owned, one story owned by tenants in common, the owners of all the stories having rights over the common hall and passage, and the owners of the upper stories having rights over the common stairs. These last also held, as appurtenant, equal shares in a cellar under another house in an adjoining yard, with shares (in common with five others) in the yard itself, and an appurtenant passage through the ground floor of the original house. The separate titles to each flat were held variously—some in undivided shares, some freehold, others for life with remainders over; these interests were separately mortgaged and charged. On one floor there were eight mortgages, mainly for trifling amounts, *e.g.* £18, £5, £2, £2, £8, etc. Another floor had twenty-nine entries in the incumbrances, including a life estate in a half-share, mortgages of quarter-shares, arrears of taxes on the entirety, bankruptcy of a mortgagee, etc. In the same city I saw the title to John Huss's Church (the Teinkirche), with that of the parsonage adjoining, and six shops erected between the buttresses; together with that of a house opposite, with a private archway over the street, and over one of the shops, into an oratory in the aisle, also appurtenant to the house. There were further rights of light and air registered, party wall, etc. In another property registered in Prague there were at one time over forty persons registered as co-owners of different shares, the shares in two cases running to $\frac{752}{2332800}$.

In the suburbs of Berlin, Vienna, and Cologne the restrictive covenants familiar on building estates in England are to be met with in great number and variety on the registers.

Enactments.

Austria.—The Austrian Land Registry Law has been substantially the same for a long period—certainly since 1764. But under a law of July 25, 1871, a revision took place, and that law now governs the subject. It also provided for the re-making of all the old registers, and for the extension of the system gradually into all the provinces of the Empire, at the instance of the provincial legislatures—a work now almost complete.

The law is divided into three principal divisions.

The First Division (ss. 1–7) contains general provisions, defining the register, enforcing registration of all dealings, prescribing the mode of registration, and regulating searches. These sections are as follows :—

1. The Land Register consists of a principal register and a file of instruments or instrument book.

2. The principal register is composed of the separate land titles (*Grundbuchseinlagen*). The land titles are arranged for the registration of—

(1) The subject-matter of each title and the dealings therewith.

(2) The real rights affecting the subject-matter of the title and the dealings therewith.

4. Rights capable of registration can only be acquired, transferred, affected, or extinguished by registration in the principal register.

5. The particulars of the registered rights are to be entered in the principal register. If these do not admit of being concisely entered, an exact reference is to be entered in the principal register to the documents on which the registration is founded, which will be equivalent to their entry in the principal register.

6. A certified copy of every document on which a registration is made is to be left in the registry. These may be bound together to form a file of instruments, or they may be copied into an instrument book.

7. The register is public.[1] Any person may inspect the register in the presence of an officer of the registry, and may take copies or extracts, which are to be made by the [chief clerk] on his sole responsibility.

The Second Division (ss. 8–75) is itself divided into five parts.

Part 1 (ss. 8–30) deals generally with the three different kinds of entries which are to be permitted, namely, registration, prenotation, and notice (defined in s. 8). The second of these is practically not much more than a provisional form of the first; these two can only be applied to real rights and charges, rights of preemption and resale, and tenancies (s. 9), and in ss. 10–19 various special points relating to these are dealt with. Notices may be registered in respect of a variety of matters affecting the status of persons, priority of charges, *lis pendens*, and the like (s. 20) This part closes with sections (21–30) dealing in general terms with the requirements and effects of registration.

Parts 2, 3, and 4, respectively, define more in detail the grounds on which and mode in which registration (31–34), prenotation (35–51), and notice (52–71) are to be applied for and entered on the register, including very important provisions (61–71) as to notices of actions for rectification of the register.

[1] This publicity is not an essential feature in land registration, and in Prussia, Saxony, Bavaria, Wurtemberg, and under the English Acts of 1862 and 1875, the registers are strictly private.

Part 5 (ss. 74, 75) contains some provisions as to dealings with separate parcels in a registered estate.

3. The Third Division (ss. 75 to 125) contains chiefly details of general practice and procedure, and, finally (ss. 122–125), rules as to appeals.

A translation of the whole enactment (with notes) is given in my Report, Appendix II.

Prussia.—The Prussian law of May 5, 1872, first established the principle of registration of title—which had, from at least as far back as 1783, applied to mortgages in Prussia—to the ownership of the land itself. It also made alterations in the law of mortgages. At the same time arrangements were made for converting the existing "mortgage registers" into land registers, and for establishing land registers where no mortgage registers had previously existed.

The law is divided into five parts. The first three deal respectively with ownership of land, ownership of real rights (which include every estate and interest short of absolute ownership except a mortgage), and mortgages; the remaining two parts are very short, and deal with mines and general matters.

The First Part (ss. 1–11) is a model of concise drafting. It deals with conveyance, registration, vesting orders, notice, successions, title by possession, effect of registration, prenotation, rectification of the register, and disability. See translation, next page.

The Second Part (ss. 12–17) deals shortly with subsidiary rights and interests, their registration, and the effect thereof; and specifies certain rights—including easements, leases (which are never long), and mining rights—which do not require registration.[1]

The Third Part (ss. 18–67) deals with mortgages in considerable detail, introducing certain changes into the law, and a special kind of mortgage called the land-charge, independent of personal indebtedness, and transferable by delivery, like a bill of exchange.

The most important provisions of this part are—(18) that mortgages can only be created by registration, with consent of the registered owner of the land; (34, 35) as to priority by registration, and power to alter the same; (38) defining the position of the two classes of mortgage and land-charge creditors; (43) as to mortgagee's power to apply for a receiver or a sale; (54) transfers and sub-mortgages may be made without registration; (57) discharges only by cancellation in the register; (64) mortgages when paid off may be kept alive for the benefit of the mortgagor.

The Fourth Part (ss. 68 and 69) deals with mines.

The Fifth Part (ss. 70–72) deals with two points of detail in regard to

[1] This is similar to section 18 of the Land Transfer Act, 1875.

prenotations and credit institutions, and fixes the commencement of the law (October 1, 1872).

On the same day an ancillary law was passed, called the "Land Register Ordinance," consisting of 143 sections, and dealing with numerous practical details.[1] A full translation (with notes) of both these laws is given in my Report, Appendix I. The first eleven sections of the law, as to the ownership of the land, relate to general principles, and are as follows :—

1. Where land is transferred by one person to another, the ownership is only to be acquired by the registration of the transfer in the Land Register, in pursuance of a conveyance.

2. A conveyance is effected by the two following verbal declarations made at the same time at the local Land Registry Office :—(1) By the registered owner, that he consents to the registration of the transferee, and (2) by the transferee, that he applies for registration.

3. A judgment ordering the registered owner to convey may be produced instead of his conveyance-declaration.

4. The transferee of an estate is not affected by notice of a prior transaction conferring a right to a conveyance on another person.

5. Where ownership of land passes by way of transmission, it can be acquired according to the already existing law. But the right to convey or incumber the land accrues only on registration as owner in the Land Register.

Co-heirs can nevertheless convey an inherited estate without being registered as owners thereof.

6. As against a registered owner, ownership cannot be obtained by occupation.[2]

7. The registered owner is empowered by virtue of his registration to exercise all the rights of action of an owner, and is bound to answer to all the actions that are directed against him as owner of the estate.

If he brings an action for recovery of ownership the defendant cannot avail himself of the defence of lapse of time.[2] If the defendant has

[1] This will shortly be superseded by an Imperial Law, passed in the present year.

[2] The distinction between ownership by occupation (for which there is no exact English equivalent), and lapse of time as a defence in ejectment (which is the same in principle as our Statute of Limitations), is common both to German and Austrian law, and is based on the Roman rules as to *usucapio* and *præscriptio*. It is shortly explained in the extracts from the Austrian Civil Code (paras. 1451–1500), and the Prussian Code, given in Appendix III., pp. 117 and 118 of my Report.

It will be observed that as against a registered owner the Prussian law now abolishes both these modes of acquisition. In this it only extends to registered land the already existing law ("Allgemeines Landrecht," Part I., cap. 9, para. 511) as to registered mortgages.

The Austrian registration system, on the other hand, preserves title by occupation, with certain safeguards to protect persons dealing on the faith of the register.

obtained possession of the estate from the plaintiff or his predecessor in title, in pursuance of a transaction intended to result in the acquisition of ownership, the rights derived from that transaction must be asserted, not as a defence, but only by action or counterclaim.

8. A prenotation of a right to a conveyance or to registration of the transfer of ownership can only be registered through the intervention of the Court, or by consent of the registered owner; and can only be cancelled on the requisition of the Court, or on the application of the person in whose interest it was effected.

9. The register can be rectified in accordance with the principles of the Civil Law.

Provided that the rights of third parties, acquired for value and in good faith in reliance on the correctness of the register, cannot be disturbed.

A plaintiff in an action to rectify the register can apply to the judge to register notice of his action.

10. Rectification may also be obtained on the ground of a fault in the transaction, in consideration of which the conveyance was effected; provided that where the fault is merely a formal one it is cured by the conveyance.

11. Limitations of the right of ownership, in order to affect third parties, must either be registered or must have been known to the latter [at the time of entering into the transaction].

It will be noticed that all conveyances are verbal, at the Registry, in the presence of the registrar. This is said to be of the utmost value in country places; the registrar makes a formal note of the declarations of the parties, and that is all. The declarations may be made by attorney.

Documents of Title.

Title deeds are quite superseded. Even land certificates are not known. Office copies of the entries in the register are used instead. In Prussia a "mortgage certificate" is issued with each charge, and has to be produced on all registered dealings with the charge. In Austria even this is unknown. The supposed inconvenience of having nothing to pledge for a temporary loan is not felt—not because loans at short notice are unusual, but because a full legal mortgage can be obtained so cheaply and so quickly that an equitable deposit is not required.

Land Banks.

Most of the loans on mortgage of land are now made by Land Banks. Their procedure is very simple. When the loan has been

determined on, the intending borrower is told to go and register a mortgage for the amount, in favour of the bank. He does so, and on his producing an office copy of the entry the loan is made. Bankers could hardly desire anything more comfortable than that.

Costs.

As stated at the beginning, this article is directed rather to the historical and legislative than to the practical side of the subject, which latter is fully treated in my Report. Before concluding, however, I must add that, taking the general average of cases, the expenses of land transfer are everywhere far below those in this country, and that the Prussian and Saxon Registries are self-supporting in the matter of fees. These begin at 5*d.* for a £1 sale, rising gradually to 7*s.* 3*d.* for £100, £1 10*s.* for £1000, £7 10*s.* for £10,000, and so on.

The average values given on all transactions in these registries are less than a quarter of those that would be given in an English Land Registry, while they certainly involve, per transaction, quite as much work as would be involved in average dispositions on the register under Lord Cairns's Land Transfer Act of 1875—probably more, as the system admits of a greater variety of transactions appearing on the register. From this it may be inferred that even with all due allowance for the difference between legal and official salaries in England and in Germany, the same scales, or something very like them, ought to render an English Land Registry efficient and self-supporting.

If Schedule II. to the pending Land Transfer Bill is compared with the Continental scales, it will be seen that the proposed fees for compulsory registration are no higher than the Continental ones, especially when it is noticed that the English scale will include mapping charges, which the foreign ones do not.

Security.

With regard to security, Continental experience entirely disposes of the notion that a registry is unsafe. In Prussia a *bonâ fide* purchaser or mortgagee from a registered owner becomes, immediately on registration, absolutely secure from all adverse claims. In Austria and Hungary there is, in theory, an interval of sixty days allowed for objection, with a very remote possibility of disturbance extending over three years. But these latter intervals are disregarded in practice, and are not known to have been ever utilized.

There always remains the theoretical possibility of a forged transfer, followed by the registration of the transferee, and then a sale by him to a *bonâ fide* purchaser ignorant of the fraud, in which circumstances

the original registered owner would, if he did not discover the fraud and lodge an objection within the prescribed period, lose his land. But I was confidently assured that no such case had ever arisen in practice. The parties to all dealings are identified by officials or notaries, and written notice of every application is sent to the registered address of every person affected by it—even when they have appeared personally and have consented to the entry being made. In Hungary no identification is required.

The pending Land Transfer Bill provides (Clause 7) that no person in possession of land shall be deprived of it by reason of an error or fraud in the Register—compensation being awarded to the other party if such a case should arise.

Expedition.

As a general rule ten to fifteen days is the outside time occupied in transactions relating to land, from the first beginning of the negotiations down to final completion of the record in the land register, the effect of which recording, it is important to bear in mind, is to enable the purchaser or mortgagee, in his turn, at once to dispose of the property, or the security, with equal rapidity and ease, in the open market, and at no further expense or trouble to himself, as is also the case in the English Land Registry under the Act of 1875. If expedition is required, a matter can be carried through in three days, and sometimes in one day, as the officials will always push forward cases where time is of importance. Mortgagees to the land banks are completed in about three days. In fact, so rapid and free from difficulty is the whole matter usually that it is not the practice to place any interval between contract and conveyance; both are contained in the same deed. A certified copy of the register is the only title shown, and this can usually be perused in a few minutes; and even where the title is involved an hour will almost always suffice to test it. The representative of an English company, buying land some years ago in Pesth, could not believe that the whole matter could be concluded at a sitting; but it was, and notice of the completion of the registration was received by the purchasers the next day.

Local Registries.

Finally, as to administration. The system is essentially a local and district system, the registers being everywhere kept in special rooms forming part of the offices of the local Courts of first instance, which, wherever the state of the population admits of it, are (like our own County Courts, of which there are 546 in England and Wales) within

easy reach of every man's door. Except in Hungary, and a few very thinly peopled districts, no registry is more than about fifteen miles from the furthest hamlet it serves. In Baden and Wurtemberg the registers are still more localized, being established in every commune.

The registrars are members of the large body called Richter (of which there are 4219 in Prussia and 3844 in Austria), who do the whole of the judicial and quasi-judicial work of the country. In small places, where there is only one Richter, he combines the land registry with his other work; in large places in Germany there are one or more Richter exclusively employed in superintending the land registry work. In Berlin, for instance, there are thirteen, in Cologne six, in Dresden five, so employed. In Austria and Hungary it is otherwise; no Richter being exclusively employed in land registry work, but there are always one or more superior clerks who attend to nothing else.

This system appears to be both economical and convenient—securing the services of competent men, acquainted with the locality and knowing many of the landowners personally, at a minimum of cost; while the offices are so well distributed over the country, that the poorest proprietors can, if they wish, inspect the registers and settle their business on market days, with no expense for travelling, and none of the difficulty and uncertainties of correspondence abhorrent to the rustic mind. The large landowners, who of course do not always reside in the district where their lands are registered, conduct their business through the post, or through a local agent.

It will be observed, from Clause 18 (5) of the pending Land Transfer Bill, that Local Registries will be an essential feature of Compulsory Registration in England.

REVIEW OF THE LEGISLATION OF THE BRITISH EMPIRE IN 1896.[1]

I. BRITISH ISLANDS.

1. UNITED KINGDOM.[2]

[*Contributed by Sir Courtenay Ilbert.*]

Acts passed—Public General, 59; Local, 253.

Poor law guardians.

THE Poor Law Guardians (Ireland) (Women) Act, 1896 (c. 5), declares women, whether married or unmarried, to be eligible as poor law guardians in Ireland, thus assimilating the law in Ireland to that in England and Scotland.

Short titles.

The Short Titles Act, 1896 (c. 14), supersedes and supplements the Short Titles Act, 1892, by giving short titles to all public general Acts now in force passed since the date of the Union with Scotland.[3]

Diseases of animals.

The Diseases of Animals Act, 1896 (c. 15), makes the slaughter of foreign animals at the port of landing compulsory.

Agricultural rates.

The Agricultural Rates Act, 1896 (c. 16), relieves agricultural land in England from half the local rates to which it is subject, and throws on the general taxes the burden of meeting the deficiency. It is to remain in force for five years only.

Chapter 37 gives corresponding relief in the case of land in Scotland, and is also limited in its duration.

Public health.

The Public Health Act, 1896 (c. 19), repeals the Quarantine Acts, and confers on the Local Government Board further powers of dealing with epidemic, endemic, and infectious diseases at ports.

Friendly societies.

The Friendly Societies Act, 1896 (c. 25), consolidates the enactments relating to friendly societies.

[1] This review comprises sessions which ended in 1896, whether begun in 1895 or 1896. Sessions which began in 1896 and ended in 1897 are not noticed on this occasion.

[2] The Session 59 & 60 Vict. ended on August 14th, 1896.

[3] For similar legislation, see Bermuda, *post*, p. 239.

UNITED KINGDOM.

The Collecting Societies and Industrial Assurance Companies Act, 1896 (c. 26), relates to a special class of friendly societies.

Cabs. The London Cab Act, 1896 (c. 27), imposes penalties for "bilking" cabmen.

Finance. The Finance Act, 1896 (c. 28), makes various amendments in the law relating to estate duty, and in particular grants exemptions from estate duty in the case of objects of national, scientific, or historic interest.

Conciliation. The Conciliation Act, 1896 (c. 30), provides for the establishment of a register of conciliation boards for the settlement of disputes between employers and workmen, and gives the Board of Trade certain powers of intervention in the case of trade disputes. It repeals the Acts of 1824, 1867, and 1872, which had previously been in force on the same subject.

Railways. The Railways (Ireland) Act, 1896 (c. 34), gives further power for aiding out of public money the construction of railways in Ireland.

Judicial trustees. The Judicial Trustees Act, 1896 (c. 35), enables the High Court and certain other courts on application to appoint what are called "judicial trustees," that is to say, paid trustees acting under the direction and with the assistance of the Court. It also empowers the Court to relieve a trustee from liability for breach of trust where he appears to have acted honestly and reasonably.

Highways. The Locomotives on Highways Act, 1896 (c. 36), which was intended to legalize the use of "auto-cars," relieves light locomotives under a certain weight from certain restrictive provisions which were framed with special reference to traction engines, ploughing machines, and other locomotives of a similar character.

Uganda. The Uganda Railway Act, 1896 (c. 38), authorizes the grant of money for the construction of a railway from Mombasa to Uganda.

Truck. The Truck Act, 1896 (c. 44), amends and defines the law as to deductions by employers from wages in respect of fines, damaged goods, and materials. The deductions must be fair and reasonable, and the terms of the contract under which they are made must be posted up in a manner convenient for inspection by the persons affected.

Stannaries. The Stannaries Court Abolition Act, 1896 (c. 45), abolishes the old court of the Stannaries in Devon and Cornwall, and transfers its duties to the local county court.

Irish land. The Land Law (Ireland) Act, 1896 (c. 47), makes a large number of amendments in the law relating to agricultural tenancies in Ireland, to the constitution of the Land Commission, and to the purchase of the landlord's interest by the tenant.

Light railways. The Light Railways Act, 1896 (c. 48), establishes a body of Light

Railway Commissioners, whose duties are to entertain applications for orders authorizing the construction of light railways. If the Commissioners approve the application they are to make a provisional order, which must be submitted to the Board of Trade for confirmation. The order may embody such provisions of the Lands Clauses Acts and similar Acts as are considered appropriate, may confer all the powers, and contain all the provisions, necessary for the constitution of a light railway company or the working of a light railway, and, when confirmed by the Board of Trade, has the same effect as an Act of Parliament. The local authorities are empowered to construct and work a light railway, and to aid in its construction by advancing money. Advances for the same purpose may also be made in certain cases and under special conditions by the Treasury. Light railways under the Act are exempted from certain enactments in the interest of public safety which apply to ordinary railways, but which were considered unnecessary in the case of railways of this special class. There is no definition of a light railway.

Pensions. The Poor Law Officers Superannuation Act, 1896 (c. 50), provides superannuation allowances for officers and servants in the employment of poor law guardians in England. The allowance is paid from a fund arising partly from the rates and partly from contributions by the persons employed. It is payable on incapacity for service, or at the age of 60 after 40 years' service, or at the age of 65. If the service has terminated previously from any cause other than misconduct or voluntary resignation, the officer retiring receives a sum equal to the amount of all his contributions.

Vexatious actions. The Vexatious Actions Act, 1896 (c. 51), enables the High Court to prohibit a person from instituting legal proceedings without leave where the Court is satisfied that he has habitually and persistently instituted vexatious legal proceedings without any reasonable ground.

Theft. The Larceny Act, 1896 (c. 52), cures a defect in the Larceny Act, 1861, by providing for the punishment of persons found in receipt or possession of property stolen abroad.

Wild birds. The Wild Birds Protection Act, 1896 (c. 56), extends the Wild Birds Protection Act, 1880, by enabling the Secretary of State on application by a local authority to make an order prohibiting, for special reasons, the taking or killing of particular kinds of wild birds, or of all wild birds in particular places, during the whole or any part of the year.

2. CHANNEL ISLANDS.

NOTE.—It has not proved possible to insert here a review of the legislation of 1896.

3. ISLE OF MAN.

[*Contributed by T. Raleigh, Esq.*]

Juries. Of the Acts of Tynwald passed in 1896 the most important appears to be the Jury Act, which fixes the property qualification of jurors (land to the value of £5 a year, or personalty worth £200) and prescribes the manner of striking a jury. The Act does not apply to setting quests, or manorial juries, or inquests of death, or to any inquest taken before a coroner, sumner-general, or sumner.

Vagrants. The Vagrancy Act provides for the prosecution of fortune-tellers and other disreputable persons.

Deeds registration. The Registration of Deeds Acts are amended by an Act which indicates the authorities in and out of the Isle who may "caption" a deed, *i.e.* may issue a certificate of due execution.

Railways. The Railway Regulation Amendment Act contains miscellaneous provisions, some of which appear to be borrowed from legislation of the United Kingdom.

II. BRITISH INDIA.

[*Contributed by Sir Courtenay Ilbert.*]

(1) ACTS OF GOVERNOR-GENERAL IN COUNCIL.[1]

Acts passed, 21.

Emigration. Act I. of 1896 gives power to exclude from the application of the Indian Emigration Act, 1883, natives of India engaged for Her Majesty's Government to labour for hire in any country beyond the sea. The Act was framed for the purpose of facilitating the employment of natives of India on the Uganda Railway.

Excise and Customs. The Cotton Duties Act, 1896 (II. of 1896), imposes an *ad valorem* duty of 3½ per cent. on cotton goods produced in mills in British India.

Act III. of 1896 substitutes new tariffs for those scheduled to the Indian Tariff Act, 1894, and includes in them the new *ad valorem* duty of 3½ per cent. on manufactured cotton goods.

The Excise Act, 1896 (XII. of 1896), consolidates, with a few amendments, the law relating to excise.

[1] There are no legislative sessions in India, but the legislative councils meet when it is found convenient. The last Act passed by the Governor-General's Council in 1895 received the Governor-General's assent on October 19th. The first Act of 1896 received the Governor-General's assent on January 10th.

Act V. of 1896 amends the Foreign Jurisdiction and Extradition Act, 1879, by making desertion from the Imperial Service Corps an extradition offence, and providing for the release on bail of persons arrested under the Act of 1879. **Foreign jurisdiction and extradition.**

Act VI. of 1896 amends the Indian Penal Code by making it an offence to counterfeit the Queen's coin, though it may have ceased to be used as money. **Penal code.**

The Indian Volunteers Act Amendment Act, 1896 (X. of 1896), enables the Governor-General in Council, in case of actual or apprehended emergency, to call out the whole or any part of a volunteer corps for actual military service, and makes a few minor amendments in the Indian Volunteers Act, 1869. A volunteer cannot be required to serve beyond the civil district or group of civil districts in which his corps or battalion is enrolled. **Volunteers.**

Act XI. of 1896 repeals the section in Act XVIII. of 1879, which imposes penalties on taking commissions for business brought to legal practitioners, and substitutes a section empowering courts to frame and publish lists of touts; and defines "tout" as meaning a person who procures the employment in any legal business of any legal practitioner in consideration of any remuneration moving from such practitioner, or proposes to a legal practitioner to procure his employment in any legal business in consideration of such remuneration. **Legal practitioners.**

Act XIII. of 1896 makes two slight amendments in the section (307) of the Code of Criminal Procedure which regulates the procedure where a sessions judge disagrees with the verdict of a jury. It also makes provision for the trial of certain offences by special juries consisting of persons "possessing superior qualifications in respect of property, character, or education." **Criminal procedure.**

Act XVIII. of 1896 amends the Punjab Municipal Act, 1891, by enabling municipal committees to make byelaws requiring licences for the sale of milk and butter, and by adding a penalty for selling any article of food or drink not of the nature, substance, or quality demanded by the purchaser. **Sale of food.**

The Sindh Encumbered Estates Act, 1896 (XX. of 1896), provides relief for embarrassed landowners in Sindh by taking their land temporarily under Government management, and preparing a scheme of liquidation. **Encumbered estates.**

The Indian Currency Amendment Act, 1896 (XXI. of 1896), authorizes the reduction by twenty million rupees (two crores) of the metallic reserve required to be kept for payment of Indian currency notes. **Currency.**

BRITISH INDIA.

(2) MADRAS ACTS.

Acts passed, 5.

Marriage. The Malabar Marriage Act, 1896 (IV. of 1896), provides for the voluntary registration of marriages between the Hindus on the Malabar coast who observe the curious custom of inheritance through sisters' sons, described in the Act as the Marumakkatayam or the Aliyasantana law of inheritance. This custom is based on the system of polyandrous marriages prevailing among Nairs, but it would appear that only monogamous marriages can be registered under the Act. The Act also lays down rules as to maintenance, guardianship, divorce, and succession in the case of persons following this law of inheritance.

(3) BOMBAY ACT.

Act passed.

The single Act of the Legislature of Bombay merely made a slight amendment in the General Clauses Act for the presidency.

(4) BENGAL ACTS.

Acts passed, 2.

Pilgrims. The Protection of Muhammadan Pilgrims Act, 1896 (I. of 1896), provides for the licensing of pilgrim brokers at the port of Calcutta, and regulates the appointment and duties of protectors of Muhammadan pilgrims at that port.

Municipalities. Act II. of 1896 makes miscellaneous amendments in the Bengal Municipal Act, 1884.

(5) N.-W. PROVINCES AND OUDH ACTS.

Acts passed, 2.

Civil procedure. Act II. provides for the appointment and jurisdiction of honorary munsifs or civil judges.

(6) REGULATIONS UNDER 33 VICT. c. 3.

(For the less advanced districts of British India.)
Regulations made, 9.

Civil procedure. The Civil Courts Regulation, 1896 (No. 1), regulates the constitution and jurisdiction of civil courts in Upper Burma.

The Burma Frontier Tribes Regulation, 1896 (No. 2), enables the Deputy Commissioner to blockade any disaffected tribe on the frontiers between Upper Burma and Arakan.

Frontier tribes.

The Chin Hills Regulation, 1896 (No. 5), gives powers for dealing with the Chins of the Chin Hills resembling in their general character those given for dealing with the Kachin Hill Tribes by Regulation 1 of 1895.

Criminal and civil procedure.

The Beloochistan Criminal Justice Regulation, 1896, and the Beloochistan Civil Justice Regulation, 1896 (Nos. 8 and 9), consolidate and amend the law relating to the administration of criminal and civil justices respectively in the new province of British Beloochistan.

III. MEDITERRANEAN COLONIES.

1. GIBRALTAR.

[*Contributed by the Hon. S. Gatty, Chief Justice.*]

Ordinances enacted, 12.

Police. No. 3 facilitates the enrolment of Dockyard Police, rendered desirable by the extensive dock works now being carried out.

Land registration. No. 5 amends the existing provisions for registering in the Supreme Court deeds and wills relating to land.

Harbour, etc. No. 7 enables the Governor by rules to regulate the Port and Harbour of Gibraltar, provision being made for regulating the movements of ships, removal of wrecks, etc., by the Port authority, and the recovery of expenses.

Savings bank. No. 8 alters the law as to deposits in the local savings bank in minor particulars.

Tobacco. No. 9 regulates the trade in tobacco at Gibraltar. Export by land is prohibited, and stringent regulations are made governing exports by sea. The object of the Ordinance would seem to be the prevention of smuggling tobacco into Spain and other countries.

Summary jurisdiction. **Mortgage.** Nos. 11 and 12 introduce into the local statute book the provisions of two Imperial Acts—(58 & 59 Vict. c. 39) The Summary Jurisdiction (Married Women) Act, 1895,[1] and (58 & 59 Vict. c. 25) The Mortgagees Legal Costs Act, 1895.

2. MALTA.

NOTE.—It has not proved possible to insert here a review of the legislation of 1896.

3. CYPRUS.[2]

[*Contributed by H. L. Ormsby, Esq.*]

Laws passed, 16.[3]

Burial. No. II., 1896, The Burials Law, 1896, gives to the High Commissioner power to provide new burial-grounds, and deals with compensation for

[1] For similar legislation in other Colonies, see *post.*, p. 182.

[2] Cyprus, by reason of its administration under the Colonial Office, is treated as a British Colony.

[3] Of these laws, one (No. XI., dealing with the Cyprus Museum, etc.) was disallowed by Her Majesty.

lands taken and the expenses of new burial-grounds. It also (s. 11) gives power to close old burial-grounds.

Public officer.

No. III., 1896, the Public Officers Guarantee Fund Law, 1896, establishes the Public Officers Guarantee Fund, and places it under the management of two directors appointed by the High Commissioner.

SS. 11, 12 give to the High Commissioner power to demand security from public officers, and to fix the amount.

SS. 13–22 deal with the payments of officers to the fund.

SS. 23–27 deal with the case of defaulting officers.

SS. 29, 33 deal with payments to a reserve fund.

S. 39 gives power to the High Commissioner, with the advice of the directors, to frame regulations for the fund.

Firearms.

No. V., 1896, the Firearms Law, 1896, amends the Firearms Law, 1889, by providing for prohibitions on possessing firearms on the report of the Medjliss Idare of a district.

Water supply.

No. VI., 1896, the Wells Law, 1896, protects old wells from injury by the sinking of new wells within 300 pics (200 yards) of surface water, or 40 pics (80 feet) of places where water is brought to the surface by mechanical appliances. It also provides for the protection of public water supplies and for the fencing of wells.

Civil procedure.

No. IX., 1896, the Civil Procedure Amendment Law, 1896, deals with the registration of unmoveable property of debtors for the purpose of sale under execution, and with the priority of registered judgments over unregistered.

Gaming.

No. X., 1896, the Gambling Law, 1896, makes gambling in open places and places of public resort offences punishable by a fine not exceeding £2.

S. 4 imposes on conviction for keeping a gambling-house a fine not exceeding £5.

S. 5 makes keepers of places of public resort who permit gambling liable to a fine not exceeding £5.

S. 6 punishes the keeping, etc., of a lottery by a fine not exceeding £2.

S. 7 gives half the penalty to the informer; and

S. 8 makes gambling debts irrecoverable at law.

No. XII., 1896, the Field Watchmen Law, 1896, regulates the election, remuneration, and duties of Field Watchmen.

S. 17 enumerates the duties of these persons; they are—

(1) To keep watch over the fields, crops, etc., within their district;

(2) To patrol the lands thereof by night and day;

(3) To report persons grazing where they have not rights;

(4) To impound trespassing animals.

CYPRUS.

(5) To report all injuries to crops, etc.

(6) To report to the police all persons found damaging trees, etc.

(7) To see that the gathering of caroubs begins on the day fixed by the district Commissioner.

S. 22 imposes a fine of two shillings on the owner of an animal found trespassing.

SS. 23–28 deal with impounding.

SS. 29–31 with the assessment of the damage caused by trespassing animals; and

SS. 32–35 with summary awards by village commissions. A schedule fixing a scale of damages is contained in Schedule 1.

Municipal councils.

No. XV. of 1896, the Municipal Councils Law, 1896, gives to municipalities power (ss. 2–8) to regulate new streets, to widen and straighten streets, and to name and number them.

SS. 9–18 deal with buildings and building-line, and give municipalities power to restrict offensive trades and cafés to particular areas.

SS. 19-33 deal with compulsory taking of lands for public purposes by municipalities.

S. 37 gives an appeal to the High Commissioner to any person prejudiced or damaged by action of a municipality.

S. 39 imposes a penalty not exceeding £2, or imprisonment for fourteen days, on obstructing municipalities or their servants.

S. 42 deals with the appointment, etc., of presidents and vice-presidents of municipal councils.

Roads.

No. XVI., of 1896, the Village Roads Law, 1896, provides that able-bodied inhabitants are to furnish six days' labour each year, or pay one shilling per day in default, for the repair, etc., of village roads.

S. 8 enumerates eighteen offences against the maintenance of roads and their free use.

S. 9 imposes a fine not exceeding ten shillings on such offences, while s. 10 provides that the offender may be ordered to make good any damage done by him.

S. 11 extends this provision to cases where no offence has been committed, but where a civil action would lie.

IV. EASTERN COLONIES.

1. CEYLON.

[*Contributed by A. Gray, Esq.*]

Ordinances passed, 34.

In vol. i. pp. 18–21, our review of Ceylon Legislation extended to Ordinance No. 3 of 1895, passed on the 10th of July, 1895. Our present review will extend from No. 4 of 1895, passed on the 23rd of October, 1895, to No. 23 of 1896, passed on the 16th of December, 1896.

Electrical power.

No. 5 of 1895 is a sketch of a law with respect to the use of electricity. Any person who intends to supply electricity must give notice of his intention to the Government agent of the province, but no powers or duties are given to that officer thereupon. By another section the Governor is empowered to make rules for the protection of person and property.

Oaths.

A new Oaths Ordinance (No. 9 of 1895) contains some provisions that are novel, and others that are characterized both by novelty and doubtful expediency. The persons authorized to make an affirmation in lieu of an oath are persons who are not Christians, and are Buddhists, Hindus or Muhammadans, or are "of some other religion according to which oaths are not of binding force." I very much doubt whether any person will ever claim to affirm on the ground of adherence to a religion coming within the last category. What religion in Ceylon can be intended? A later section authorizes the imposition of oaths according to modes or ceremonies suggested by the opposite party. Our readers should be aware that the Sinhalese, who pay scant reverence to the court oath, frequently offer to be cast in a suit if their opponent will swear to the justice of his case at a particular shrine or holy place.

The last section authorizes Courts to punish perjury summarily as a contempt of Court. I am well aware how efficacious this treatment of false swearers may be in Ceylon, but it is not every judge who can be expected to wield the power with judicial calmness. The ordinance would have been improved by a provision requiring in every case an adjournment to the following day.

Criminal law.

The Ceylon Penal Code is amended by No. 11 of 1895 with respect to cohabitation induced by false pretences.

CEYLON. Crime has been very rife in Ceylon of late, and criminal legislation is correspondingly active. The last instalment (No. 15 of 1896) gives a suggestion of panic. The Governor may appoint in any district persons to be "inquirers," for the purpose, it would seem, of detecting and reporting crime. They have the power, so much canvassed in the case of the Irish Crimes Act, of holding an inquiry before any person is accused. They have power to search, and to arrest without warrant. They are each to keep a diary, which is to be furnished on demand to the Criminal Court, not to be used "as evidence in the case, but to aid it in such inquiry or trial," whatever this may mean. On the whole, this Ordinance gives one the impression that the ordinary machinery for the detection and punishment of crime has broken down. We may express the hope that the new system will restore law and order, but as respects the new officers, is not "Inquirer" dangerously near "Inquisitor"?

Evidence. No. 14 of 1895 is a code of the law of Evidence, framed on the model of the Indian Evidence Act.

Public health. The regulation of dairies and laundries, and various provisions relating to sanitary matters, similar to those of the English Public Health Acts, make up the subject matter of No. 1 of 1896.

Marriage. Last year (see vol. i. p. 20) I called attention to a section of the Marriage Ordinance of 1895, which required not only solemnization by a minister or registrar, but also registration, to validate marriage, and observed that it appeared too stringent. I am glad to be able now to record that the section is repealed by No. 10 of 1896.

Sale of goods. The Sale of Goods Act is partly applied to Ceylon use by Ordinance No. 11 of 1896.

2. STRAITS SETTLEMENTS.

[*Contributed by Israel Davis, Esq.*]

Ordinances passed, 21.

Suitors funds. No. 1, reciting that 2 per cent. is a higher rate than can be obtained from any Bank in the Colony upon current accounts, amends the Suitors Funds Ordinance, 1891, by enacting that monies paid into the Supreme Court shall no longer bear interest at the rate of 2 per cent. per annum, but such rate as shall from time to time be fixed by the Governor in Council, being not greater than the highest rate of interest which for the time being can be obtained by the Government on a current account from any bank in the Colony.

Banishment. No. 2 (amended by No. 14) prohibits persons lawfully banished from Johore, or from any native state, and not natural-born subjects of Her

Majesty, from residing in the Colony during the term of such banishment. The onus of proving a person to be a natural-born subject of Her Majesty is to lie upon such person. *STRAITS SETTLEMENTS.*

Petroleum. No. 3 consolidates and amends the law relating to the carriage and storage of petroleum and other inflammable oils and liquids. The definition of petroleum includes not only the substances specifically mentioned in the Imperial Petroleum Act of 1871 (34 & 35 Vict. c. 105), but also kerosine, paraffine oil, petroline, gasoline, benzol, benzoline, and benzine.

Colonial defence. No. 4 appropriates a percentage of 17½ per cent. of the colonial revenue as a contribution for the defence of the Colony, payable in return for the annual cost of the Imperial garrison.[1] The sum paid by way of percentage in any year is not to exceed the cost of the garrison for that year.

Police. No. 5 enables the Governor to send detachments of police to serve in native states in times of emergency.

Limitation of time. No. 6 is an elaborate Limitation Act. Actions on statutes, or for wages, or for food, or drink, or lodging, or to set aside Government sales, or for false imprisonment, malicious prosecution, libel, etc., must be brought within one year. Actions against carriers for compensation and actions for torts not specially provided for must be brought within two years. Actions for the hire of animals, vehicles, boats, or household furniture, for the price of goods where no period of credit is agreed upon, etc., must be brought in three years. The same period of limitation is specified for actions on bonds, as also on bills of exchange inclusive of *hoondees*. The period of six years applies only to actions for compensation for the breach of contracts in writing upon foreign judgments, or for suits for which no period of limitation is provided elsewhere. The period is twelve years upon a judgment obtained in the colony, or a recognizance to enforce payment of money charged upon immoveable property, or to recover possession of immoveable property. The period is thirty years against a depository or pawnee to recover moveable property deposited or pawned. The period of sixty years (from the time when the money secured becomes due, or the right to redeem or recover possession accrues) applies to actions by a mortgagee for foreclosure or sale, and against a mortgagee to redeem or to recover possession of the immoveable property mortgaged. The time from which the period begins to run is stated with precision for each description of suit, as in the Indian Act (No. 15 of 1877) upon which the statute is modelled.

[1] The same percentage on the revenue has been similarly appropriated in Hong Kong (see *post*, p. 156).

STRAITS SETTLEMENTS.

No. 7 provides for the suppression of the practice of injecting preparations of morphine by unqualified persons.

Morphine.

Bankruptcy.

No. 8 amends the Bankruptcy Ordinance, 1888. The Bankruptcy Ordinance of 1888 was a very carefully settled enactment founded upon the English statutes, but comprising also the results of some of the most important decisions on the Act of 1883. The present statute makes some small alterations which have been deemed desirable.

Municipalities and public health.

No. 15, an ordinance to amend and consolidate the law with regard to municipalities, is not only a code of public health, but also gives the Governor large powers of erecting municipalities. The voters for the Commissioners who form the administrative body in municipalities must *inter alia* be of the male sex. The voters possessed of qualifications in more wards than one are to have a vote in each such ward. No officer or servant of the Commissioners is to be entitled to vote. Borrowing powers to be exercised with consent of the Governor in Council are also conferred by the Ordinance.

Protection of women.

No. 17 amends the law relating to protection of women and girls, giving considerable power to the officers performing the duties of protector and assistant protectors of Chinese immigrants.

Lodging houses.

No. 18 provides for the registration and control of native passenger lodging-houses.

Emigration.

No. 21 regulates emigration from the Colony, and defines "emigrant" as meaning a labourer of Asiatic birth who has entered or agreed to enter into a contract to labour for hire in some place beyond the limits of the Colony on certain terms.[1]

Burial and cremation.

No. 19 provides for the regulation of burial and burning-grounds. In carrying the Ordinance into effect, due regard is to be had to the nationalities and religious usages of the several classes of the community.

3. LABUAN.[2]

4. HONGKONG.

[*Contributed by F. A. Satow, Esq.*]

Ordinances passed, 22.

Extradition.

The North Borneo Extradition Ordinance, 1896 (No. 3), provides for the extradition of fugitive criminals from the territory of the British North Borneo Company.

[1] Recruiters of emigrants must be licensed, and crimping is made punishable by fine and imprisonment.

[2] It appears that no Ordinances were passed for this Colony during 1896.

The Factors Ordinance, 1896 (No. 6), amends and consolidates the law relating to mercantile agents.[1] Factors.

The Sale of Goods Ordinance, 1896 (No. 7), codifies the law relating to the Sale of Goods.[2] Sale of goods.

The Suitors Funds Ordinance, 1896 (No. 8), provides that moneys paid into Court shall be placed on deposit with the Colonial Treasurer and bear interest at the rate of 2 per cent. Suitors funds.

The Coinage Offences Amendment Ordinance, 1896 (No. 10), empowers justices of the peace to issue search warrants for counterfeit coin or instruments for coining. The coin and instruments may be seized, and every person being in the building, vessel or place entered or broken into who appears to have the coin or instrument in his possession or under his control may be arrested. Coinage offences.

The Supreme Court Admiralty Procedure Ordinance, 1896 (No. 13), regulates the Admiralty procedure of the Supreme Court. From and after the 1st of September, 1896, the Vice-Admiralty Court Rules, 1883, cease to have operation, and in lieu thereof new rules[3] of procedure for the Admiralty jurisdiction of the Supreme Court, and contained in the schedule to the ordinance, apply to all Admiralty actions commenced after that date. Admiralty procedure.

The Marriage Law Amendment Ordinance, 1896 (No. 14), amends the Marriage Ordinance, No. XIV. of 1875, by applying that ordinance to all marriages where neither of the parties has an undivorced husband or wife living, except marriages between persons neither of whom professes the Christian religion duly celebrated according to the personal law and religion of the parties; the words "husband" and "wife" to include persons married according to their personal law and religion.[4] Marriage.

It further provides that in the event of two parties wishing to contract a marriage before the Registrar-General under the provisions of s. 24[5] of Ordinance XIV. of 1875, they shall each of them sign a written declaration to the effect that they fully understand that by publicly taking each other as wife or husband (as the case may be) in the presence of the Registrar-General, they become legally married, although no other rite of a civil or religious nature shall take place, that the marriage cannot be dissolved during their joint lives except

[1] Compare the (Imperial) Factors Act, 1889 (52 & 53 Vict. c. 45).

[2] Compare the (Imperial) Sale of Goods Act, 1893 (56 & 57 Vict. c. 71).

[3] No order in Council has at present been issued under s. 7 of the Colonial Courts of Admiralty Act, 1890 (53 & 54 Vict. c. 27), approving these rules.

[4] S. 39 of the Ordinance, which is repealed, declared that the Ordinance applied to marriages where one or both of the parties professed the Christian Religion.

[5] This section provides for marriage before the Registrar-General in the presence of two or more witnesses, in the Registrar-General's office, with open doors.

HONGKONG.

by a valid judgment of divorce, and that if either of them contracts another marriage whilst the one about to be contracted remains undissolved, that person will be guilty of bigamy, and liable to the punishment for that offence.

Registration of births and deaths.

No. 16 amends and consolidates the law relative to the registration of births and deaths.

Adulteration.

No. 18 makes provision for the sale of food and drugs in a pure state, and prohibits their mixture with injurious ingredients. A Court or magistrate may order the destruction of any article of food or drug in connection with which an offence is proved to have been committed under the Ordinance.

Pawnbrokers.

The Pawnbrokers Compensation Ordinance, 1896 (No. 20), follows the provisions contained in the (Imperial) Pawnbrokers Act, 1872 (35 & 36 Vict. c. 93, s. 30 (2) and (3)), permitting the delivery to the owner of property unlawfully pawned, and provides for compensation, under certain circumstances, to the pawnbroker.

Defence contribution.

No. 21 appropriates yearly a sum equivalent to 17½ per cent. of the Colonial revenues to the Imperial Government as a contribution for the defence of the Colony.[1]

5. MAURITIUS.

[*Contributed by F. T. Piggott, Esq., Procureur and Advocate-General.*]

Ordinances passed, 31.

Buildings and public health.

The Ordinances passed during the 1896 Session of the Legislative Council for the most part amended previous laws.

The greater part of the session was devoted to the new Building Ordinance (No. 18 of 1896), by which several important recommendations of Mr. Chadwick, C.M.G., were given effect to. The whole of the law on the subject was at the same time remodelled.

Part II. deals with buildings in Port Louis: buildings in wood are prohibited within the central part of the town, and in other parts can only be erected by permission. Buildings covered with straw are entirely forbidden in the town, but may be erected in the suburbs by permission. Provisions are enacted dealing with paving and drainage of the ground surrounding all buildings, with the floors, ventilation, room-space, open spaces, chimneys, kitchens, and outhouses; and also with the inspection of buildings.

Common lodging houses.

Part III. deals with the survey and inspection of "Dangerous Buildings"; and Part IV. with the registration and inspection of common

[1] For similar legislation in the Straits Settlements, see *ante*, p. 153.

lodging-houses. The definition of "common lodging-house" is as follows (art. 41): "Every house or building or part of a house or building occupied by lodgers on payment of a certain sum, whether the same be paid daily, weekly, monthly, or otherwise, and whether direct to the keeper or not, provided the number of lodgers exceeds five"—the members of one and the same family to be reckoned as one lodger only.

Dangerous goods.

Part V. provides for the licensing of forges and furnaces in Port Louis; and Part VI. regulates the storing of dangerous goods: sulphuric acid being specially dealt with by art. 67. The extension of the Ordinance to towns and villages and the remainder of the rural districts is provided for in Part VII. From orders made by the Authority, an appeal is given to a specially constituted Board of Appeal, composed of the Procureur-General, two unofficial members of the Legislative Council appointed by the Governor, the Mayor of Port Louis, and the Surveyor-General. A Building Board for making regulations for carrying out the Ordinance is created, consisting of the Mayor of Port Louis, the Surveyor-General, the Government Engineer, the Architect of Port Louis, the Presidents of the Boards of the three towns—Curepipe, Beau Bassin and Rose Hill, Quartre Bornes—the Curepipe Engineer, the Sanitary Engineer of the Colony, and two nominees of the Governor. The Authorities for the various parts of the Island are—for Port Louis, the Corporation; for the three towns, the Boards of Commissioners; and for other parts of the Island, the Sanitary Engineer of the Colony. The last article defines the matters which may be dealt with by the Board by means of regulations.

Building and Appeal Boards.

Supreme Court.

An Ordinance (No. 21) was passed providing that the quorum of the Supreme Court should in all cases be composed of three judges. This Ordinance was, however, disallowed.

Statute law revision.

During the course of the year 1896 a revised edition of the laws was issued in three volumes; the revision was undertaken by the Acting Chief Judge, Mr. F. T. Piggott, Mr. L. A. Thibaud (acting Substitute Procureur-General), and Mr. F. A. Herchenroder (acting Crown Prosecutor), assisted by the Hon. George Guibert, Q.C., and the Hon. William Newton, Q.C. A "Law Revision Ordinance" was also prepared, but time did not permit of its being proceeded with beyond the first reading.

V. AUSTRALASIA.

1. NEW SOUTH WALES.[1]

[*Contributed by A. R. Butterworth, Esq.*]

Acts passed—Public, 41; Private, 3; Bill reserved, 1.

Crown lands. Two Acts deal with Crown lands:

(1) A short Act, entitled The Crown Lands (Homestead Selections and Settlement Leases) Act, 1896 (59 Vict. No. 26), amends Part III. of the Crown Lands Act of 1895 (58 Vict. No. 18),[2] by enacting that the title to any homestead selection or settlement lease shall commence from the date of the application, if valid. The effect of the application is to withdraw the land from any annual lease or occupation license under which it may be held.

(2) The Conditional Purchasers' Relief Act (60 Vict. No. 2) reduces in certain cases the annual payments made in respect of conditional purchases, and in some cases the rate of interest on such purchases, and facilitates the conversion of conditional purchases and conditional leases into homestead selections.

Imported stock. The Imported Stock Act Further Amendment Act, 1896 (60 Vict. No. 1), in amending the Acts of 1871 (35 Vict. No. 6) and of 1884 (48 Vict. No. 12), enlarges the power of the Governor to regulate the seizure and disposal of diseased stock and carcases.

Standard time. A short Act (60 Vict. No. 4), passed to amend the Standard Time Act of 1894 (58 Vict. No. 11), illustrates the difficulty of having one standard time throughout a country which extends over 13½ degrees of longitude. This Act applies the mean time of 135° East of Greenwich within the districts of Broken Hill and Sturt to the hours for the sale of liquor and for certain other matters under the Licensing Acts, and also to the hours for voting at Parliamentary and Municipal Elections; while

[1] The Public Acts of the Colony are numbered consecutively in each year of the Queen's reign. Thus, the last Act passed in 1895 was 59 Vict. No. 25 (23rd December). The first passed in 1896 is 59 Vict. No. 26 (15th June); the second is 60 Vict. No. 1 (27th June). The session of 1896 ended December 10, 1896.

[2] As to the provisions of this Act, see *Journal*, vol. i. pp. 27, 28.

in respect of all other matters those Districts remain subject to the Act of 1894; *i.e.* the standard is the mean time of 150° E.[1] *NEW SOUTH WALES.*

60 Vict. No. 5 is a Public Act to further amend two Private Acts of 1889 and 1892, dealing with property of the Church of England, and provides, in effect, that a Bishop consecrated in the Colony without the issue of a license by the Crown shall, notwithstanding doubts that have arisen, be entitled to certain real estate held upon trust for the Church and to the same rights and privileges as his predecessors. **Church of England.**

Besides one Act dealing with coal mines regulations, and another with no-liability mining companies (noticed hereafter), two Acts were passed dealing with mining: **Mining.**

(1) The Act 60 Vict. No. 7 alters certain provisions of the Mining Act, 1874, with respect to those licenses which are known as "miner's rights" and "mineral licenses" respectively.

(2) The Mining Law Amendment Act of 1896 (No. 40)—which brings up the number of Acts amending the Mining Act of 1874 to over a dozen—is chiefly concerned with the Mining on Private Lands Act of 1894 (57 Vict. No. 32), and considerably extends the wide powers conferred by that Act of mining on the private land of others. Lands enclosed and under cultivation were expressly excluded from the operation of the earlier Act (s. 12); but, by the present Act, the Governor is empowered to grant a lease of such lands for mining (*a*) for gold, or (*b*) for silver, lead, tin, or antimony; such lease is not to include the surface, nor to exceed a prescribed area, and the lessee is liable to pay compensation for damage done to the surface.

In the three Acts—No. 8, No. 27, and No. 31—authorizing the construction of certain railway lines, notice may be taken of the provision which dispenses with the necessity for the constructing authority to make or maintain fences along the lines, and thus overrides the general fencing provisions of s. 106 of the Public Works Act, 1888. **Railway fences.**

The State Children Relief Act of 1896 (No. 9) extends the provisions of the Act of 1881, which established the system of boarding-out, raises the age at which children may be retained from twelve to fourteen years, and confers the power of supervision for a further period of two years. **Boarding-out system.**

The Coal Mines Regulation Act, 1896 (60 Vict. No. 12), repeals the **Coal mines regulation.**

[1] As to the Act of 1894, see *Journal*, vol. i. p. 27. The mean time of 135° E. was, by the South Australian Standard Time Act, 1894 (57 & 58 Vict. No. 600), declared to be standard time throughout South Australia, with which Colony the Districts of Broken Hill and Sturt are in close relation. As to standard time in Tasmania, Victoria, Western Australia, and Ontario, see *Journal*, vol. i.

NEW SOUTH WALES.

Act of 1876 (39 Vict. No. 31), and is almost a transcript of the (Imperial) Coal Mines Regulation Act, 1887 (50 & 51 Vict. c. 58). The employment of girls and women in or about a mine is, however, absolutely forbidden, as is also the employment of boys under the age of fourteen; while boys between the age of fourteen and eighteen may not be employed in a mine below ground for more than nine hours a day from Monday to Friday, and six and eight hours on alternate Saturdays, with an interval of at least twelve hours between each period (s. 34). The provisions of the short English Act of 1894 (57 & 58 Vict. c. 52) are reproduced (s. 47, Rule 41), but not those of the English Act of 1896 (59 & 60 Vict. c. 43).

No-liability mining companies.

The No-liability Mining Companies Act, 1896 (60 Vict. No. 15), is an important Act of eighty-two sections and several pages of schedules, repealing the Act of 1881 (44 Vict. No. 23), which introduced the No-liability System, and containing full provision for the incorporation, regulation, and winding-up of such companies. This system, under which shareholders are not liable to be sued for calls or contributions, but are merely not entitled to receive dividends upon a share in respect of which a call remains due, is still limited in New South Wales to mining companies (see ss. 1, 6, and First Schedule), although elsewhere it has been extended to other companies.[1]

Municipal baths.

The Municipal Baths Act of 1896 (No. 16) increases the powers of Municipal Councils to construct baths, and validates certain acts already done by them.

Public officers' fees.

The Public Officers' Fees Act, 1896 (No. 17), is a short Act providing that all fees received by public officers are to be accounted for as money received on account of the revenue.

Water rights, conservation and supply.

The Water Rights Act (No. 20) declares the respective rights of the Crown and of riparian proprietors to the waters of rivers and lakes, and makes provision for the better conservation and supply of water, and construction of drainage works. If a proposal to construct works for conserving or supplying water, or for drainage in any district, is notified by the Governor, and a petition in favour of it is signed by two-thirds

[1] The No-liability System is also limited to companies incorporated for mining purposes in Tasmania (Mining Companies Act, 1884, 48 Vict. No. 15, Parts III. and V.), Western Australia (Act of 1888, 51 Vict. No. 32, Part IV.), and New Zealand (Act of 1894, 58 Vict. No. 51, Part IV.). In Victoria it has been expressly extended by an Act of last session to trading companies (Companies Act, 1896, 60 Vict. No. 1482, ss. 1 (3), 4; see *post*, p. 171), to which it appears to have been extended in South Australia also (see Companies Act, 1892, 55 & 56 Vict. No. 557, Part IX.; cf. s. 130 of the repealed Mining Companies Act, 1881, 44 & 45 Vict. No. 204). In Queensland, so far as the writer is aware, the No-liability System has not been introduced.

NEW SOUTH WALES.

of the occupiers in the district, occupying more than two-thirds of the total area, on the recommendation of the Local Land Board, the work may be carried out by the Government, and charges not exceeding 6 per cent. of the cost may be assessed and levied upon the occupiers. The occupier of land, whereon any such work is constructed or used, may obtain a license for the sole and exclusive use of such work upon payment of certain fees.

Limitation of compensation for railway accidents.

By the Government Railways (Compensation Limitation) Act, 1896 (No. 21), the amount of damages recoverable against the Railway Commissioners for personal injury on or about any railway or tramway is limited to £2000.

Electric traction.

By the Electric Traction Act, 1896 (No. 22), the Railway Commissioners are authorized to use electric traction on all tramways vested in them.

Franchise extension.

The Franchise Extension Act, 1896 (No. 24), removes the disqualification for voting at Parliamentary elections imposed on members of the Police Force[1] by the Parliamentary Electorates Act, 1893; while another statute (No. 25) makes further amendments to the same Act of 1893.

Public service, superannuation.

The Public Service (Superannuation) Act, 1896 (60 Vict. No. 27), extends to all persons in State employment the right to elect to discontinue contributing to the Superannuation Fund, and makes certain provisions in the event of their so electing, thus amending the Public Service Act of 1895.[2]

Bankruptcy.

The Bankruptcy Acts Amendment Act, 1896 (No. 29), attempts to remedy a considerable number of the numerous defects in the principal Act of 1887.

Navigation.

The Navigation Acts Amendment Act, 1896 (No. 36), fixes new pilotage rates and otherwise amends the Act of 1871, 35 Vict. No. 7.

Factories and shops.

The Factories and Shops Act of 1896 (No. 37) makes provision for the supervision and regulation of factories, bakehouses, laundries, dye-works, and shops, for the limitation in certain cases of the hours of working therein, and for extending the liability of employers for injuries; and introduces into the Colony provisions founded on those of the English Factory and Workshop Act, 1878. The Act applies only to districts proclaimed by the Governor (s. 3). No child under 13 years of age may be employed in a factory, and no child between 13 and 14, except by special permission of the Minister administering the Act (s. 35). No male under 16, and no female, may be employed in a factory for more than 48 hours in a week, except that they may be

[1] Compare the (Imperial) Police Disabilities Removal Act, 1887 (50 & 51 Vict. c. 9).

[2] As to this Act, see *Journal*, vol. i. p. 29.

NEW SOUTH WALES.

employed overtime for 3 hours on not more than 3 consecutive days, and on not more than 30 days in the year (s. 37).

Public health. The Public Health Act, 1896 (60 Vict. No. 38), is the first Statute in the Colony which has made general provisions to promote public health. The Board of Health was constituted under the Act, 45 Vict. No. 25, passed in 1881 to prevent the spread of smallpox, and was given authority to deal with that disease and with quarantine generally. The Board was given powers with regard to the supervision of dairies (50 Vict. No. 17) in 1886, the treatment of leprosy (54 Vict. No. 21) in 1890, the sale of diseased animals and meat (55 Vict. No. 17) in 1892; and it was incorporated and given increased powers under the Noxious Trades and Cattle-Slaughtering Act, 1894. The present Act largely increases the general powers of the Board of Health, and deals with such matters as the prevention of infectious diseases, unwholesome buildings, nuisances, polluted water supply, and adulterated food and drugs.

Patents law. The Patents Law Amendment Act, 1896 (No. 39), is a transcript of the provisions as to amendment of specification, disclaimer, and revocation of patent, contained in ss. 18, 19, 20, and 26 of the (Imperial) Patents, Designs and Trade Marks Act, 1883 (46 & 47 Vict. c. 57).

Coloured races restriction. The Coloured Races Restriction and Regulation Act, 1896 (No. 41), is a Bill which was reserved for the signification of the Queen's pleasure thereon,[1] and which has not received the Royal assent.[2] Its object is to extend the general provisions[3] of the Chinese Restriction and Regulation Act of 1888 to all persons belonging to any coloured race inhabiting Asia, Africa, or any adjacent island, or any island in the Pacific or Indian Ocean, except the native races of Australasia. The Act of 1888 raised the poll-tax on every Chinaman arriving in the Colony from £10 to £100, and restricted the number of Chinese arriving in any vessel according to the tonnage of the vessel—the proportion being one Chinaman to every 300 tons; and the owner, master or charterer of such vessel was rendered liable to a penalty of £500 for each Chinaman carried in excess of the limit. These provisions do not apply to one who is "by birth a British subject," but the naturalization of Chinese is prohibited. The present Bill seeks to repeal the words in the Act of 1888 "by birth a British subject," but exempts from its operation persons duly accredited on a special mission by their own Government, ministers of religion, missionaries, native teachers, tourists, merchants, men of

[1] This subject is discussed in an article, *post*, p. 336.

[2] For legislation in other colonies, see New Zealand, *post*, p. 188; South Australia, *post*, p. 172; Tasmania, *post*, p. 167.

[3] Sections 1, 2, 12, and 19 of the Act of 1888 are excepted: s. 1.

science, students, and their wives, families, and domestic servants. The Governor-in-Council is also empowered to exempt any person or class of persons from the provisions of either Act. *NEW SOUTH WALES.*

2. TASMANIA.[1]

[*Contributed by J. H. Greenhalgh, Esq.*]

General Acts passed, 55.

House of Assembly. Act No. 1 [2] repeals the Constitution Amendment Acts, 1885 and 1893, ss. 12 & 23 respectively (48 Vict. No. 8, and 57 Vict. No. 9), by providing that the House of Assembly shall consist of thirty-seven members, and regulating their qualifications.

Loans on chattel securities. Act No. 2 amends the law relating to all bankers and to loans made upon chattel securities, by enacting that questions between two or more depositors shall be decided in a summary manner by a judge of the Supreme Court; but the existing law as to pawnbrokers is not to be applied to loans or advances made by merchants, bankers, commission agents, brokers, or licensed auctioneers in the ordinary and *bonâ fide* course of business.

Company (reduction of capital). Act No. 3 amends the Companies Act, 1869, by empowering a company to reduce its capital on conditions similar to those obtaining in England.[3]

Gaming. Act No. 7, which provides for the better suppression of betting and gaming in public places, introduces the provisions of the Imperial Acts (16 & 17 Vict. c. 119, ss. 1, 3, 4, 7; 37 & 38 Vict. c. 15, s. 3; 55 & 56 Vict. c. 4, ss. 1 (1) 3). Persons betting with infants are deemed to have knowledge of the infancy. The usual exception is made as to stakes or deposits to be paid to the winner of any race or lawful sport, or to the owner of any horse engaged in any race. The Governor in Council is empowered to make regulations for securing the proper conduct of any lottery not prohibited by the Act.

Presbyterian Church. Act No. 8 consolidates and amends the law relating to the Presbyterian Church of Tasmania. The Acts of the general assembly of the Church have the force of law with regard to the management of Church property. Certain trustees named can alone sue and be sued concerning Church property.

[1] The Session 60 Vict. ended on the 30th of Dec., 1896. The Acts passed down to the former date are here noticed. Some of them classified as general would in the United Kingdom have been treated as local.

[2] This Act has not (July 9, 1897) been assented to; see also Act No. 54 noticed *post*, p. 167.

[3] Compare the (Imperial) Acts, 30 & 31 Vict. c. 131, ss. 9-20; 40 & 41 Vict. c. 26.

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Game. Act No. 12 amends the Game Protection Act, 1895,[1] as to breeding seasons of native game.

Marriage. Act No. 13 allows marriages of persons who object to the celebration of marriage by an officiating minister or Registrar to be celebrated by licence or certificate *by mutual contract* before two or more witnesses and in the presence of a Registrar of Marriages; provisions are made for the appointment of Registrars.[2]

Sale of goods. Act No. 14 is substantially a reproduction of the (Imperial) Sale of Goods Act, 1893 (56 & 57 Vict. c. 71).

Voluntary conveyances. Act No. 16 is a re-enactment for the Colony of the (Imperial) Voluntary Conveyances Act, 1893 (56 & 57 Vict. c. 21).

Enforcement of judicial orders. Act No. 17 relates solely to procedure. The Act provides for the enforcement of orders or rules of the Supreme Court or judges' orders for the oral examination of any officer of a corporation against which a judgment or order has been obtained and for the swearing before justices of affidavits of service.

Owners' voting power. Act No. 21, which regulates municipal elections in Hobart, gives the plural vote to owners of property.

Destitute children and youthful offenders. Act No. 24, which runs to great length, consolidates and amends the law as to destitute and neglected children and youthful offenders; it deals with receiving depôts, probationary schools, and the Secretary of the Department for neglected children is constituted the guardian of the persons mentioned above, and of the estates of the wards of the Department; neglected children may be committed to the care of private persons and institutions; industrial and training schools are regulated; boarding-out committees and visitors are to be appointed; the term "parent" is defined (s. 90), and includes the putative father of any illegitimate child which he may have recognized as his, although no order of affiliation may have been made against him. No proceedings can be taken against the Secretary of the Department except by consent of the Attorney-General, and the determination of age by the Court is conclusive for the purposes of the Act.

Bread. Act No. 30 regulates the sale of bread. All bread, except rolls or fancy bread, is to be sold in loaves of 1-lb., 2-lb., or 4-lb. weight.[3] A penalty is imposed on persons selling bread made of unwholesome flour; or selling flour of one sort of corn as flour of another sort. Power is given to health officers and inspectors to search bakers' shops. The other provisions are similar to those of the English Acts.

[1] As to this Consolidating Act, see *Journal*, vol. i. p. 36.

[2] For the provisions of the Consolidating Act of 1895, see *Journal*, vol. i. p. 30.

[3] Compare the (Imperial) Bread Act, 1836 (6 & 7 Will. 4, c. 37).

Act No. 34 amends the Inspection of Machinery Act, 1889, by providing for the recovery from owners of fees for the inspection of steam-boilers and machinery of the same. **Inspection of machinery.**

Act No. 35 renders penal the importation of fruit, plants, or other products in grass or straw, or any material calculated to introduce into Tasmania the Queensland Cattle-tick. **Animal.**

Act No. 38 empowers every local Board (*i.e.* the Municipal Councils of Hobart and Launceston, every rural municipality and every town board proclaimed under the Act of 1884) to make bye-laws as to the bringing of any person suffering with infectious disease into their district. The grazing-grounds of persons sending or supplying milk or butter for sale within the district of the local Board are subject to the Board's control. Its officer or any police constable may obtain a sample of such milk. The exposure of a body of any person who has died from infectious disease without taking reasonable precautions against spreading such disease is rendered penal. **Public health.**

Act No. 41 recites the expediency during 1897 of reducing certain salaries and annual payments. Members of the Council and House of Assembly were formerly entitled to receive £100 per annum as a reimbursement for expenses; the Act reduces this to £50. **Reduction of salaries.**

Act No. 43 consolidates and amends the law relating to legal practitioners, *i.e.* persons admitted under this or former Acts to act as barristers, attorneys, solicitors, and proctors; a board of examiners is appointed; conditions and restrictions as to articled clerks are laid down; persons admitted and entitled to practise in England, Scotland, or Ireland may be admitted without examination; barristers and attorneys of Colonial Courts must have been articled to an attorney or solicitor in such colony, and have duly served there as clerk for a term equal to the term for which such person would be required to be articled in Tasmania under this Act; notice of intention of application to practice must be published; recovery of fees and taxation of costs are dealt with; a penalty is imposed as in England upon any unqualified person who for fee or reward prepares or assists in preparing any deed whatsoever, or otherwise practises the business of a conveyancer. A person holding a conveyancer's certificate under any repealed or previous Act is eligible for admission as a practitioner. Any person or society may appear by counsel before the Supreme Court and apply that a practitioner be compelled to answer allegations made in an affidavit. The analogous Acts of 52, 54 55 & 59 Vict.[1] are repealed. **Legal profession.**

[1] Noticed in *Journal*, vol. i. p. 34.

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Sheep dipping. Act No. 47 amends the Stock Act, 1889, by providing that, except where a clean certificate has been obtained, all sheep shall be dipped after shearing in every year, and also all lambs at the same time. Any sheepowner who refuses to satisfy the inspector that his sheep have been dipped is liable to a penalty.

Small debts. Act No. 48 consolidates and amends the law relating to the recovery of debts and demands not exceeding £100, and continues the existing Courts and empowers the Governor in Council to appoint Courts to be held by a Commissioner under the Act; the following provisions are the more noticeable: minors may sue for wages without the agency of a next friend; one of several persons liable may be sued; the presiding Commissioner alone determines all questions when the amount claimed does not exceed £10; claims exceeding £10 may be tried by a jury; actions of ejectment and replevin as to land valued above £100 are only cognizable by the Supreme Court which has jurisdiction in Hobart and Launceston in cases where the amount in dispute is between £10 and £100. A judge of the Supreme Court may order any action before him to be tried by a jury; the jury is to consist of three persons, of whom, after being one hour in deliberation and unable to agree, the verdict of two shall be the judgment of the Court; if after three hours' deliberation two cannot agree then the jury are discharged. Claims to personal property taken in execution may be made by telegram. The Court may give leave to any person to appear and address the Court on behalf of a party, but such person may take no further part in the proceedings, unless he be a clerk in the *bonâ fide* separate and exclusive employment of one of the parties.

Parliamentary elections. Act No. 49 consolidates and amends the law relating to the election of members of Parliament. Each elector has one vote only, but may vote in the alternative for as many candidates as he pleases, provided he votes for not less than one-half of the number of members to be elected. His vote is deemed to be given in the first place for the candidate opposite whose name is placed the figure 1; but in the event of its not being required for the return of such candidate it may be transferred to other candidates in sucession in the order of priority indicated by the figures set opposite each name (s. 102). In every case where there is more than one candidate to be elected the "quota" of votes is ascertained (s. 115), and the candidate having the full quota is elected; the unused votes are transferred by the returning officer as indicated above. The candidate having the least number of first votes is excluded from the poll, and the other votes are similarly transferable. The exclusion of the lowest candidate is repeated until the number of candidates is reduced to the number of members to be

elected. The giving of refreshments or entertainment during polling hours is illegal. The giving, providing, or wearing of cockades, badges, or flags, is rendered penal. Candidates' expenditure is limited to certain matters. Other provisions are similar to those obtaining in England.

Income tax. Act No. 50 amends the Income Tax Act, 1894,[1] by providing that every local body shall pay tax in respect of interest on money borrowed on debentures to the Commissioners of Income Tax.

Syndicates. Act No. 51 amends the Mining Companies Act, 1884, and deals with the formation and registration of rules of syndicates formed for prospecting purposes.

Bills of sale. Act No. 52 consolidates and amends the law as to Bills of Sale. Under its provisions every bill of sale is to be filed at the Registrar's office before its powers are exercised, and where two or more bills comprise wholly or partially the same chattels, notice of intention to file must be lodged at such office. Certain creditors may enter caveats to stay filing.

Elector's qualifications. Act No. 54 amends the Constitution Act, by enacting that every male person of the age of twenty-one, being a natural-born or naturalized subject of Her Majesty, is entitled to vote for the election of members to the Legislative Council if he possesses a certain property qualification (freeholder of annual value of £15, or occupier of annual value of £50), *or* any of the following qualifications, *and* is a resident in the district for which he intends to vote:—

(*a*) A graduate of any university in the British dominions, or an associate of Arts of Tasmania;
(*b*) a legal practitioner on the roll of the Supreme Court;
(*c*) a legally qualified medical practitioner;
(*d*) an officiating minister of religion;
(*e*) an officer or retired officer of H.M. Land or Sea Forces not being on actual service, or a retired officer of the Volunteer Force of Tasmania.

The qualifications of electors for the House of Assembly are also specified.

Coloured races. Act No. 55[2] extends the provisions of the Chinese Immigration Act, 1887 (which limits the number of Chinese not being British subjects who may be brought into the colony, and imposes a poll-tax of £10), to all male persons of *any coloured race* inhabiting Asia, Africa, or any island adjacent thereto, or any island in the Pacific or Indian Ocean,

[1] Which established income tax in the colony and was amended in 1895 by an Act reviewed in *Journal*, vol. i. p. 31.

[2] This Act was reserved, and was assented to February 26, 1897.

TASMANIA. not being persons duly accredited on any special mission to Her Majesty by the government or ruler of any country or to their colony under the authority of the Imperial Government. The Act does not apply to persons either wholly or partially of European descent or to the native races of Australia and New Zealand.

3. VICTORIA.[1]

[*Contributed by H. E. Gurner, Esq.*]

Acts passed, 92.

Between 10 July, 1895, and 24 December, 1896.

Of the Acts which received the royal assent in the sixteenth Parliament of the colony of Victoria up to the end of 1896, the following appear to be worthy of attention :—

Customs and excise. Act No. 1401 amends the duties of customs and excise.

Electric lighting. Act No. 1413 is an Act for the purpose of regulating the supply of electricity for lighting and for other purposes, and seems to be an enactment altogether similar to the Electric Lighting Acts of 1882 and 1888 of the Imperial Statutes.

Married women. Act No. 1416 relating to married women's property is in all respects identical with the Imperial Statute (56 & 57 Vict. c. 63).

Voluntary conveyance. Act 1417 relating to fraudulent conveyances is identical with the (Imperial) Voluntary Conveyances Act, 1893 (56 & 57 Vict. c. 21).

Intestates' estates. Act 1419 entitled an Act to amend the law by making better provision for the widows of certain intestates in the distribution of such intestates' property is a reproduction for the colony of the (Imperial) Intestates Act, 1890 (53 & 54 Vict. c. 29), but the widows' share is £1000 instead of, as under the Imperial Act, £500.

Trustee. Act No. 1421 a Trusts Amendment Act re-enacts the Trustee Act of the Imperial Parliament of 1893 (56 & 57 Vict. c. 53) with some unimportant differences.

Sale of goods. Act 1422 relating to the sale of goods is a re-enactment of the (Imperial) Sale of Goods Act, 1893 (56 & 57 Vict. c. 71).

Book debts. Act 1424 relating to the assignment or transfer of book debts

[1] Two Sessions of this legislature ended in 1896 and are both here reviewed. The session 59 Vict. ended in March, 1896 (Acts 1391–1443) ; and the session 60 Vict. ended on the 24th of Dec., 1896 (Acts 1444–1482).

requires assignments of book debts to be registered with the Registrar-General. No assignment may be made without fourteen days' notice. The notice must be indexed, and is open to the inspection of the public on payment of one shilling. Any creditor may enter a caveat, which must be notified to the assignor and assignee of the debts. The County Court Judge then has the matter before him, and can make such order as the justice of the case demands as to costs and payment of the caveator's debt, or grant compensation against the caveator if he thinks he has acted improperly. These provisions do not apply to an assignment of book debts for the benefit of the creditors generally.

Theatres: Sunday.

Act No. 1430 gives the chief secretary power to cancel or suspend the licence of any theatre, house, room, building, garden, or place, if it has been used for any public entertainment on a Sunday without a special permit.

Vehicular traffic.

Act No. 1431 regulates the weights carried on certain vehicles. No greater weight may be carried than $5\frac{1}{2}$ cwt. for each half-inch of width of the bearing surface of the tire or felloe of each wheel, and the weight of the vehicle is to be taken into account (s. 1). Pieces of heavy machinery which cannot be taken to pieces without great loss or expense are exempt from this provision (s. 1 (3)). Any one preventing the proper officer from measuring (s. 7), and any unauthorized person measuring (s. 9), are each liable to a penalty not exceeding £10. Every vehicle except private passenger vehicles is to have the weight of the vehicle and the width of the tire or felloe painted legibly on it. Tramways are exempt from this Act.

Vegetation diseases.

Act 1432. The Vegetation Diseases Act, 1896, empowers the Governor to proclaim a district which is infested with disease in the vegetation or parasites. Thereupon occupiers may be compelled to take such measures to deal with the disease as may be directed, or the authorities may do it and charge them with the costs.

Gaming.

Act 1436. The Street Betting Suppression Act (s. 2) defines the offence of street betting. The Act was passed in consequence of the inadequacy of the pre-existing provisions (Police Act, 1890, No. 1126; see *Gleeson* v. *Adams*, 1894, 20 Vict. L. R., 229), and imposes a penalty of not less than £20 nor more than £100 on a first conviction, and not less than £100 nor more than £200 on a subsequent conviction. In case of betting through a clerk or agent, both principal and agent are liable. Money or valuables handed to persons offending against s. 1 can be recovered by action. Money stolen and used in paying bets can be recovered by the true owner from the recipient. S. 5 defines "street" as including every highway, road, street, lane, footway or

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thoroughfare, on any public or private property, and as including[1] any enclosed or unenclosed land within the municipal district which is a city or town. Houses and race-courses are excepted. Ss. 8–11 of the Act adopt for the colony the substance of the (Imperial) Betting and Loans (Infants) Betting Act, 1892[2] (55 & 56 Vict. c. 4).

Sugar-beet.

Act 1440 is an Act for the encouragement of the establishment of the sugar-beet-growing industry in Victoria, and gives power to make advances to companies formed for that purpose.[3]

Australasian federation.

Act 1443 is an Act to authorize Victoria to take part in the Colonial Federation Convention.

Factories.

Two Acts, Nos. 1445 and 1476, amend the Factories and Shops Act of 1890 (No. 1091). They correspond in certain details with the (Imperial) Factory and Workshop Acts of 1878 (41 & 42 Vict. c. 16), 1891 (54 & 55 Vict. c. 75), and 1895 (58 & 59 Vict. c. 37), but are not a mere adaptation of these Acts.

S. 15 of the Act No. 1445 provides for the determination by a special board of the minimum rate of wages for making wearing apparel, furniture, and bread.

Under s. 21 no boy under 16 nor girl or woman may be employed in factories for more than forty-eight hours in the week nor for more than ten hours in one day or later than 9 p.m.; but in order to meet unforeseen pressure, they may be employed fifty-four hours in the week under certain regulations, and then boys under sixteen and females, when they are wage workers, are to be paid for overtime at the rate of time and a half, and each piece worker three-pence per hour overtime and sixpence tea money each evening they work overtime.

Under s. 22 in any factory where any Chinese are employed, no work is to be done before 7.30 a.m. or after 5 p.m. or 2 p.m. on Saturdays, and no Sunday work whatever.

Under s. 37 sitting accommodation is to be provided for assistants in shops in the proportion of one seat for three persons employed.

Under s. 41 the time for boys under sixteen or for females employed in shops is limited to fifty-two[4] hours per week, excluding meal-times. Nine hours a day is the maximum which may be done, except one day a week, when eleven hours is fixed. When a public holiday takes place, two days of eleven hours each may be worked, provided the shop

[1] Compare the Imperial Act (36 & 37 Vict. c. 38, s. 3); and see *Gleeson* v. *Jones*, [1896] 22 Vict. L. R., p. 321.

[2] This Act was re-enacted for Queensland by 59 Vict. c. 9 (see *Journal*, vol. i. p. 48).

[3] As to West Indian sugar, see *post*, p. 242. In Canada there is a bounty on sugar-beet (*Journal*, vol. i. pp. 103 and 105).

[4] Compare the Imperial Shop Hours Act, 1892 (55 & 56 Vict. c. 62).

is closed on the holiday. No boy under sixteen or female may work more than five hours without at least half an hour's interval for a meal.

Under s. 46 milk is not allowed to be cried[1] out or delivered after 12 on Sunday. This does not prevent a person going to the shop and buying it.

Under s. 48 every occupier of a shop is bound to permit his employees to have one half-holiday a week, beginning at 1 p.m.

Under s. 56 all Victorian-made furniture is to be stamped with the name and address of the manufacturer, and if made by European labour, with words to that effect, and if by Chinese labour, the words "Chinese labour" are to be placed upon it. Penalties are provided for securing the performance of all these provisions.

Act No. 1476 prohibits the delivery of meat on Sunday (s. 8), and amends the provisions for settling the minimum wages for making furniture.

Act 1463 contains provisions to protect native game. The Governor by proclamation may fix the time at which it is illegal to kill the game. The Act prohibits the importation of swivel or punt guns into Victoria. **Game.**

Act 1467 continues for the year 1897 the rate of income tax fixed by Act 1374,[2] and makes some unimportant amendments in the older Act. **Income tax.**

Act No. 1482, the Companies Act, containing 176 sections and 9 schedules, adopts a good deal of the bill introduced in the Imperial Parliament in 1896 to amend the Companies Acts,[3] and almost entirely re-enacts the provisions of the Companies Winding Up Act of 1890 (53 & 54 Vict. c. 63) and the Directors Liability Act, 1890 (53 & 54 Vict. c. 64).[4] **Company.**

[1] Compare s. 3 of the Sunday Observance Act, 1677 (29 Chas. 2, c. 7).

[2] For provisions of this Act, see *Journal*, vol. i. p. 37.

[3] The portions adopted are indicated on the margin of the sections.

[4] As to the no-liability system and its extension by this Act, see footnote, *ante*, p. 160.

4. SOUTH AUSTRALIA.[1]

[*Contributed by T. Raleigh, Esq.*]

Acts passed, 28—General, 24; Local and Private, 2.

The Statutes of 1896 include 26 Public Acts, numbered from 647 to 672 inclusive.

Colonial government.

No. 607 may be cited as the Electoral Code, 1896; its provisions are framed upon the model of English Statute Law. In Council elections a property qualification is prescribed; in Assembly elections any British subject of the age of twenty-one who has been registered for six months may vote. The Court of Disputed Returns consists of a judge of the Supreme Court and four members of the Council or the Assembly as the case may be. The Court is to be guided by the real justice of the case, without regard to legal technicalities, and there is no appeal from its decisions.

No. 648 consolidates the debt of the Colony and provides for the appointment of Public Debt Commissioners. By No. 663 the limit of exemption from income tax is raised from £125 to £150.

Under No. 660 two or more municipal corporations may petition to be united, and the Governor may unite them and adjust their rights and liabilities accordingly.

Local government.

By No. 666 the licensing laws are extended to clubs; and each electoral district is constituted a local option district; the electors may in the prescribed manner obtain a reduction in the number of licences, or prevent the issue of new licences.[2] The provisions of the Act do not apply to the Parliamentary refreshment rooms, or to military canteens.

Industrial legislation.

No. 649 provides for mining licences in the Northern Territory, and for leases of large tracts of land for horse-breeding. No. 654 regulates the supply of wheat-seed to District Councils for distribution to farmers. By No. 657 provision is made for testing the qualifications of licensed surveyors. No. 658 amends the Workmen's Liens Act, 1893. No. 672 enacts that the Immigration Restriction Acts are to apply to coloured persons as well as Chinese. This Act was reserved by the Governor for the signification of Her Majesty's pleasure, and has not yet received the Royal assent.

Family law.

Under No. 664 magistrates are empowered to make orders for the protection of married women. Where the husband has been guilty of

[1] The Session 59 & 60 Vict. ended on the 19th of December, 1896.

[2] For other local option legislation, see *post*, p. 225.

cruelty, adultery, desertion, or neglect, an order may be made relieving the wife from the obligation to cohabit, giving her the custody of her children, and directing the husband to pay a proper allowance for maintenance.[1] *SOUTH AUSTRALIA.*

5. QUEENSLAND.[2]

[*Contributed by W. F. Craies, Esq.*]

Acts passed—Public and general, 34;[3] Private, 1.

Australasian federation.

Queensland alone of the Australian Colonies had not by 1896 passed an Act[4] adhering to the scheme of a convention to frame a Federal Constitution for Australasia. A Government Bill for the purpose was introduced in 1895, but did not pass owing to a controversy as to whether the delegates of the Colony to the Convention should be directly chosen by the electors or selected by the Legislature.

The Federal Council Referring Act (Queensland), No. 3[5] (No. 19), provides, in exercise of the power given by s. 15 (*i*) of the Federal Council of Australasia Act, 1885 (48 & 49 Vict. c. 60),[6] for the delegation to the existing Federal Council of the power of legislating for the colony as to (*a*) quarantine, (*b*) patents of invention and discovery, (*c*) naturalization of aliens *of European descent*, (*d*) winding-up of Joint Stock Companies carrying on business in more than one colony and dealing with and giving effect to schemes of arrangement and compromise between any such company and its creditors, (*e*) the enforcement by the Supreme Court of one colony of any process of the Supreme Court of another directed to compelling the production in the latter Court of any will or testamentary document in the possession of a person resident in the former colony, (1) devising or bequeathing property situate in the colony where the process issues, (2) required by the executors or trustees under the document resident in the latter colony for purposes of probate or registration there.

[1] Compare the (Imperial) Summary Jurisdiction (Married Women) Act, 1895 (58 & 59 Vict. c. 39), and for Legislation of other colonies, see *post*, p. 182.

[2] The Session 60 Vict. ended in December, 1896.

[3] Of these four would in England be classed as local.

[4] A Federation enabling Bill is now (November, 1897) under discussion by the Queensland legislature.

[5] The previous Referring Acts are 53 Vict. No. 20 (1889, lunacy, and production of documents), and 53 Vict. No. 28, discipline and government of garrisons maintained at joint expense of colonies. See also the Western Australia legislation referred to, *post*, pp. 181, 182.

[6] Adopted in Queensland in 1885 (49 Vict. No. 16).

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Three Acts were passed in 1896 with reference to the constitution and government of the Colony.

Constitution. (Officials in Parliament.)

The Officials in Parliament Act of 1896 (No. 3) is the Colonial equivalent of 6 Anne, c. 41, s. 25,[1] with respect to the sitting in Parliament of Crown officials. It empowers (s. 1) the Governor by Proclamation to declare any officers of the Crown, not exceeding eight, who are liable to retire from office on political grounds, to be eligible to the Legislative Assembly, of whom any seven may, if elected, sit at the same time. Until such proclamation the following are the eight officials: the Chief Secretary and Treasurer (substituted for Colonial Treasurer), Attorney-General *or* Solicitor-General *or* Minister of Justice, Home Secretary (substituted Colonial Secretary), Postmaster-General, Secretary for Mines and Secretary for Railways, Secretary for Public Instruction and Secretary for Public Works, Secretary for Public Lands, Secretary for Agriculture. The salaries of these ministers are fixed by the Act (s. 6), and while one minister may occupy two or more of the offices, he may not receive more than one of the salaries (s. 8). With the above exception, no person is eligible for, nor can sit or vote in the Legislative Assembly, who holds any place of profit under the Crown, or has a pension from the Crown during pleasure or for a term of years. But the disqualification does not apply where the person is recipient only of pay, half-pay, or a pension in the Army or Navy, or to a person who receives a commission therein, or an increase of pay, or a new commission, or daily pay as a member of the Colonial Defence force, and is not employed permanently or at an annual salary.

(Payment of members.)

No provision is made for paying ordinary members of the Legislative Council, but the Constitution Act Amendment Act of 1896 (No. 5) fixes the salaries of the "officers in Parliament," *i.e.* the President of the Council, the Speaker of the Assembly, £1000 each, and the Chairman of Committee of each House, £500 each (s. 1), and the allowances of members of the Assembly at £300 a year, with mileage and passage money from the place of nomination to the place of sitting (s. 2). Members who receive an official salary out of the Consolidated Revenue can receive a member's allowance only so far as it exceeds their official salary (s. 7). The Act repeals prior legislation of 1889 and 1892 as to payment of members.

(Civil service.)

The Public Service Act of 1896[2] (No. 15) provides for the better regulation of the public service; *i.e.* of all persons in receipt of a fixed annual salary out of the Consolidated Revenue or out of any special fund, including state-school teachers and post officials, and, with certain

[1] See May, "Parl. Procedure" (10th ed.), 29, 603.

[2] For similar legislation in New South Wales, see *Journal*, vol. i. p. 29.

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exceptions, such as ministers, judges, Crown prosecutors, and the police and the Colonial Defence force. The service is divided into two classified divisions—professional and ordinary—and an unclassified division. The classified divisions are sub-divided into six classes, according to their salaries, and a probationary class. By Part III. a Public Service Board is substituted for the Civil Service Board (created in 1889), and consists of three salaried members appointed by the Governor or Council (s. 6). Its functions are to make regulations, subject to any specific statutory provisions—(1) as to examinations for admission to the service (including provisions as to health of candidates, and a qualifying period of residence in the Colony (s. 15)); (2) as to classifying the work and specifying the duties and maintaining discipline among public servants; (3) prescribing the mode of procuring and inspecting Government stores, and supervising Government contractors for stores. Part IV. provides for the administration of the service, and prescribes a monthly return from the permanent head of each department, and annual visitation and inspection of each department, and empowers the board to make recommendations as to the staff required. With a few exceptions, no person may be admitted to the service without passing a qualifying examination by examiners appointed by the Governor in Council (ss. 25, 26).

Elaborate provision is made for discipline and retirement, but not for pensions, which are regulated by other legislation. Examinations for employees on state railways are governed by Part IV. of the Railways Act of 1896[1] (No. 30).

Colonial defence.

The Defence Act Amendment Act of 1896 (No. 33) amends the principal Colonial Defence Act of 1884,[2] by empowering addition of supernumeraries to the established strength of any corps of the active forces (s. 2), by releasing officers from the burden of supplying their own uniforms, arms, and accoutrements (s. 2; 1884, s. 37), and by increasing from sixteen to twenty-four days the period for which the active force can be annually called out for drill and training (s. 4).

Finance and revenue.

1. Loans.

The Government Loan Act of 1896 (No. 17) makes provision for raising a Government loan of £2,344,800 by debentures or inscribed stock, bearing interest at a rate not exceeding 3 per cent., and repayable not later than the 1st day of January, 1947, the proceeds to be devoted to public purposes specified in the Act, which include Colonial defence, railways, harbours, and electric telegraphs.

2. Customs

The Customs Duties Act of 1896 (No. 9) creates a long scheduled list of exemptions from the ordinary customs duties of the

[1] *Post*, p. 179.

[2] "Queensland Statutes Revised," vol. i. p. 499.

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Colony,[1] the exemptions to begin as from the dates specified in the schedule against such article. Provision is made for modification of contract price to give effect to the exemption, and the Governor in Council may exempt from duty the component parts of compound articles included in the schedule.

Statistics. The Statistical Returns Act of 1896 (60 Vict. No. 16),[2] with the object of collecting statistical information, empowers the Registrar-General, subject to regulations by the Governor in Council (s. 11), to prepare and issue forms for procuring information on pastoral, agricultural, mining, manufacturing, and other producing interests (s. 4). The persons to whom the forms are sent must supply the information required; and elaborate provision is made for making the Registrar-General's certificate *primâ facie* evidence of delivery of the form, and imposing on the person said to be in default the burden of proving that he has returned the form filled up (ss. 9, 10).

Mercantile law. (Sale of goods.) The Sale of Goods Act, 1896 (60 Vict. No. 6), is a transcript of the Imperial Sale of Goods Act of 1893 (56 & 57 Vict. c. 71), with the omission of the parts special to Scotland, and slight rearrangement of the clauses. It repeals three Colonial Acts.

(Stock mortgages.) The Mercantile Amendment Act of 1896 (60 Vict. No. 10) requires the registration of mortgages on live stock, and preferable liens on wool or crops. The place and mode of registration are also prescribed.

(Bills of sale.) The Bills of Sale Amendment Act of 1896 (60 Vict. No. 11) amends the principal Act of 1891 (55 Vict. No. 23) by requiring registration of a Bill in each district in which any of the mortgaged chattels are, and by requiring a triennial instead of an annual renewal of registered Bills. The Act of 1891 is framed on the English Acts of 1878 and 1882, but is not cumbered with any statutory form of bill of sale.

(Companies.) The Companies Act of 1896 (60 Vict. No. 21) amends s. 35 of the Companies Act of 1889 (53 Vict. No. 18), which is a transcript of the (Imperial) Act of 1870 (33 & 34 Vict. c. 104, s. 2), by extending the power of the Court to order a meeting of creditors to cases where no action is pending, or the Court will not restrain a pending action, and for this purpose makes the presentment of a winding-up petition equivalent to winding up.

Agriculture, etc. Three Acts were passed with special reference to agriculture and pastoral pursuits, directed at the eradication of disease in stock and plants and the suppression of the pest of rabbits, and at creating special authorities for dealing with their special subject-matter.

[1] These are imposed by Acts of 1888 (52 Vict. No. 5), 1890, 1892, and 1894.

[2] Cf. Tasmania, *Journal*, vol. i. 34; New Zealand, *ibid.*, 78.

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The Diseases in Stock Act of 1896 (60 Vict. No. 1 [1]) corresponds in its general purpose to the (Imperial) Diseases of Animals Act, 1894 (57 & 58 Vict. c. 57). It is administered by a Board of Stock Commissioners appointed by the Governor in Council, and presided over by a Chief Inspector of Stock. The Board discharges duties which in England fall on the Board of Agriculture. A Diseases in Stock Fund is created, fed by an annual assessment at a rate not exceeding *2s. 6d.* per 100 head of horses or cattle levied on every owner of 50 or more (ss. 6, 7), out of which compensation to the extent of half the value is payable in the case of destruction of stock or appliances effected under the Act. The Governor in Council can prohibit the introduction or removal of stock, and make regulations of a most elaborate character, similar to those dealt with by s. 22 of the (Imperial) Diseases of Animals Act of 1894 (57 & 58 Vict. c. 57). **(Diseases of animals.)**

The Diseases in Plants Act of 1896 (No. 25) provides for creating a Board of Advice, styled the Diseases in Plants Board, who are to advise the Secretary of Agriculture what diseases of plants should be brought under the Act, whether the import of particular plants should be restricted or forbidden, or their removal within the colony restricted. The Board must consist of not less than seven nor more than nine members—three being officers of the department, the rest representatives of fruit-growers, fruit-dealers, and nurserymen. The particular object of the Act is to deal with insects and fungi injurious to cultivated plants or fruit, and the machinery consists in the use of inspectors, inspection on import, and destruction of diseased plants or other measures to eradicate disease. Compensation is payable only when plants not diseased are destroyed. **(Diseases of plants.)**

The Rabbit Boards Act, 1896 (No. 34 [2]), consolidates and amends the laws relating to the migration and incursion of rabbits. It is administered by a Central Rabbit Board and District Boards, and the means for staying the rabbit plague are by putting down rabbit-proof fencing at the cost of the colony. The Act repeals three prior Acts of 1891, 1894, and 1895. **(Rabbits.)**

Banks and banking. (Private banks.)

Two Acts were passed to obviate the inconvenience caused to the Government and private depositors by the second failure of the Queensland National Bank, a joint-stock company, which in some respects occupied the position of the State Bank. 60 Vict. No. 13 gave a temporary Government guarantee up to £800,000 of the sum due by the bank on the current accounts of depositors, and gave the Government the recourse of a surety against the Bank; and 60 Vict.

[1] Cf. New Zealand, *Journal*, vol. i. p. 76; Western Australia, *ibid.*, p. 60.

[2] As to prior legislation of the colony, see *Journal*, vol. i. p. 52.

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No. 22 authorized the Treasurer to enter into agreements with the Bank as to the time and mode of repayment of moneys due by the Bank to the Government.

(Government savings banks.)

The Government Savings Bank Acts Amendment Act of 1896 (60 Vict. No. 4[1]) makes several minor amendments in the prior Acts with reference to the annual account of deposits and expenses, and also reduces the maximum interest to 5 per cent., and limits the deposits on which interest is payable to £200, except in the case of Government Trust Funds or those of registered Friendly Societies (s. 6).

Electricity.

The Electric Light and Power Act of 1896 (No. 24), which is an Act of 64 sections, is framed somewhat on the same lines as the (Imperial) Electric Lighting Acts of 1882 and 1888 (45 & 46 Vict. c. 56; 51 & 52 Vict. c. 12), and is to a large extent a transcript of these Acts, but deals also with supply of electricity for all purposes except of the post-office and traction on tramways under the Colonial Tramways Acts, 1882 to 1890. The Governor may by order in Council authorize any local authority, company, or person to supply electricity within a prescribed area for the purposes and time specified in the order (s. 8), subject in the case of supply by private adventure to an option of purchase exercisable by the local authority at the end of forty-two years (s. 46). The consent of the local authority to supply by private adventure is usually requisite, but can be dispensed with (s. 10). The grant of an order is not a monopoly nor a bar to the grant of another order to other persons in the same area (s. 10 (3)).

Factories and shops.

The Factories and Shops Act of 1896 (60 Vict. No. 29) deals with the same subject-matter as the (Imperial) Factories and Workshops Acts, 1878 to 1895, and the Shop Hours Regulation Acts, but in a somewhat different and simpler manner. It applies only to districts to which it is extended by gazetted proclamation of the Governor (s. 3). The definition of factory (s. 2 (1)) includes workshops as defined in the (Imperial) Acts.

All factories in a declared district must be registered with the inspector for the district (ss. 5, 6), and in the case of new factories can receive a certificate of registration only if the inspector is satisfied of their fitness for use. Shops need not be registered.

Part II. provides for the keeping by the occupier of every factory or shop of records of all persons employed, and of their ages if under 18; and also in the case of factories of the scale of wages, and piece work, and outside work (ss. 13, 14).

Part III. provides for sanitary arrangements in both factories and shops.

[1] Cf. Western Australia, *Journal*, vol. i. p. 54.

Part IV. deals with fencing machinery and protection from fire.

Part V. with the ages of persons to be employed. No person under fourteen may be employed in a factory (ss. 2, 35).

Part VI. limits the work-hours in shops for males under sixteen and females, with exceptions in the case of certain scheduled businesses.

Fisheries. The Pearl-Shell and Bêche de mer Fishery Act Amendment Act of 1896 (No. 32) amends the Act of 1891 by substituting fresh provisions for limiting the minimum size of pearl-shell to be taken, and for examining and seizing "dwarf" shell.

Mines. The Gold Mines Drainage Act of 1896 (60 Vict. No. 18) amends an Act of 1891 on the same subject, by making the amount of mine owners contributions a charge on the mine (s. 2), and by giving to the Governor in Council further powers (s. 3) of regulating the constitution and authority of Gold Mines Drainage Boards under the Act of 1891.

Railways. No. 30 repeals the Railways Act of 1895,[1] and by Part II. provides for the appointment, salary, and duties of a single commissioner and a deputy-commissioner of railways.

Part III. deals with the construction and working of all railways.

SS. 15, 16 provide for a statement and opinion by the Commissioner (i.) before a proposed line is surveyed; (ii.) before the plans, sections, and book of reference are laid before Parliament. These reports take the place of reports of Select Committees on railway bills. By other sections the Commissioner is empowered to take accommodation lands, and easements, and parts of buildings, and to authorize limited lateral deviation. Mining under railways is unlawful if the chief engineer thinks the operation might render the railway unsafe (s. 27).

Part IV., as to examination of candidates for service on the state railways, has already been mentioned.[2]

Shipping. The Navigation Act Amendment Act of 1896 (No. 31) amends an Act of 1876.[3] S. 4 alters the fees payable for the certificates required by passenger steamers plying in Queensland.

SS. 6–13 deal with the marking a ship's draught, deck-line, and load-line.

SS. 14, 15 provide that where the provisions under the legislation of another British colony or foreign state as to load-lines are based on the same principles, or are as effective as those of the Queensland

[1] *Journal*, vol. i. p. 49. The chief Colonial Acts are those of 1863 (27 Vict. No. 8) and 1888 (52 Vict. No. 8).

[2] *Ante*, p. 175.

[3] 41 Vict. No. 3; "Queensland Statutes Revised," vol. ii. p. 1617.

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Act, the compliance with them is to be accepted as compliance with the Queensland Act.[1]

Inebriates.

Perhaps the most interesting Act of the Session is the Inebriates Institutions Act of 1896 (No. 14). Parts I. and III., with reference to retreats, are transcripts of the (Imperial) Inebriates Acts, 1879 and 1888 (41 & 42 Vict. c. 19; 51 & 52 Vict. c. 19). But Part II. is framed on a novel principle. The Governor in Council may by order in Council declare any premises named in the order to be an institution for inebriates (s. 3), and may appoint a superintendent and such officers as he thinks necessary (s. 4), and make regulations for the management of the institution (s. 5).

Persons who desire to enter such institution or a retreat for inebriates may apply to a judge of the Supreme Court, or of a District Court, or to a police magistrate, or any two justices, who if satisfied that he has habitually exceeded in the use of intoxicants *or drugs* (*i.e.* opium, morphia, cocaine, chloral, or any other drug capable of creating mental aberration), and is then sober and understands the nature of his application, may order his conveyance to the institution or retreat, and his detention there for not over twelve months.

On the application of the husband or wife, or of any relation or friend of any person so addicted to the habitual use in excess of intoxicants or drugs, a judge of the Supreme or a District Court, or two justices, one being a police magistrate, may, if the application is proved to be reasonable, summon the alleged inebriate to show cause why he should not be committed to an institution for inebriates (s. 7). If on the hearing of the summons, in the presence or absence of the alleged inebriate, it appears that by reason of the excessive use by him of intoxicants or drugs—

(1) He is unable to control himself and incapable of managing his affairs, or

(2) He is dangerous to himself or to others;

(3) He is suffering under or recovering from delirium tremens or chronic alcoholism, or is in imminent danger of death from the continuous use of such drinks or drugs;

and if it is also (*a*) certified by two medical practitioners in writing that

[1] The (Imperial) Merchant Shipping Act, 1894 (57 & 58 Vict. c. 60), provides (s. 444) for the issue of an Order in Council declaring that load-lines fixed in pursuance of a Colonial enactment based on the same principles as the Imperial Act shall have the same effect as if fixed in pursuance of that Act. No Order in Council has been issued in this case. The importance of some provision is illustrated by the difficulty which has lately arisen in carrying cattle by sea when the regulations as to pens differ at the foreign port from those in force at the English port of arrival (32 *Law Journ.*, p. 527).

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the inebriate requires curative treatment in an institution, or (*b*) proved that he has not less than five previous convictions recorded against him for being found drunk on licensed premises or in a public place,[1] the Court may make an order for the detention of the inebriate in an institution for not over twelve months.

Two justices (one a police magistrate) can make a similar order on a complaint before them for the offences last named if the offender is proved to have been three times convicted of a like offence during the preceding twelve months.

The order can be rescinded (s. 9) or renewed if desirable (s. 14); but while in force authorizes the detention of the inebriate, and, if he escapes, his recapture (s. 10). The Court which makes the order fixes the scale of payment to be made by the inebriate and the mode of its recovery (ss. 11–13). Ill-treatment of and misconduct by the inebriate during his detention are summarily punishable (ss. 15, 16).

Cruelty to children.

The Children's Protection Act of 1896 (No. 26) is a transcript of portions of the (Imperial) Prevention of Cruelty to Children Act, 1894 (57 & 58 Vict. c. 41), but omits the elaborate provisions of the latter Act as to licences for children to perform at public entertainments, and as to custody and guardianship.

6. WESTERN AUSTRALIA.[2]

[*Contributed by J. C. H. James, Esq., Barrister-at-Law, Commissioner of Titles, Western Australia.*]

Acts passed—Public, 44; Private, 2.

The following measures present features of interest—

Foreign companies.

No. 2. The Act to amend the Companies Act, 1893, enables a foreign company to obtain a certificate of compliance with certain provisions of that Act, so as to prove its incorporation.

Powers of attorney.

No. 3. The Powers of Attorney Act, 1896, provides for the registration of such instruments in the Office of the Supreme Court.

Adoption of children.

By the Adoption of Children Act, 1896, No. 6, a judge's order confers, with certain exceptions, the status and mutual legal relations of child and parent in the case of an adopted child of either sex under the age of fifteen years.

Australasian federation.

No. 7. The Federal Council Reference Act, 1896, refers to the Federal Council of Australasia—

[1] See 49 Vict. No. 18, s. 84; "Queensland Statutes Revised," vol. ii. p. 1275.

[2] The session 60 Vict. ended October 27, 1896.

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(*a*) The establishment of an effectual system of quarantine.

(*b*) The status of Joint Stock Companies and similar corporations in Colonies other than that in which they have been constituted; facilities for the winding-up of companies and corporations carrying on business in more than one such Colony, and for dealing with and giving effect to schemes of arrangement and compromise between them and their creditors.

(*c*) Uniformity of Banking Laws.

(*d*) Legislation on the lines of the Imperial Infectious Diseases (notification) Act, 1889.

(*e*) Precautions against, and remedial measures for tuberculosis.

No. 32. The Australasian Federation Enabling Act, 1896, provides for the election of ten representatives of the Colony to take part in a convention for the purpose of framing a federal constitution, and for transmitting the same for legislative enactment by the Imperial Parliament.

Evidence (criminal).

No. 8. The Married Women's Property Act, 1896, makes husband or wife a competent, and unless defendant, a compellable witness in criminal proceedings for the protection of property under the Married Women's Property Act, 1892, ss. 12, 16.

No. 31. By the Criminal Evidence Act, 1896, in offences summarily punishable, an accused person and the wife or husband of such person are made competent witnesses.

Evidence (documentary).

No. 27. The Evidence Amendment Act, 1896, provides for the proof of the contents of public books of any part of Her Majesty's dominions by examined or certified copies or extracts.

Protection of married women.

No. 10. The Summary Jurisdiction (Married Women) Act, 1896, enables a married woman in cases of aggravated assault within the meaning of 24 & 25 Vict. c. 100, s. 43, neglect to provide maintenance or persistent cruelty on the part of the husband, to obtain from two justices any or all of the following orders, viz.:

(1) for relief from cohabitation;

(2) for alimony, not exceeding £3 a month;

(3) for the custody of any children under 16 years of age, born of marriage with the husband.

This summary jurisdiction may also in certain cases be exercised by the Supreme Court, or by any Court of General or Quarter Sessions, without a jury.

Constitutional law.

No. 18. The Constitution Act Amendment Act, 1896, divides the Colony into 8 (heretofore 7) electoral provinces, returning each 3 members to the legislative council, and into 44 (heretofore 33) electoral

districts, returning each 1 member to the legislative assembly; increases the principal executive offices from 5 to 6, and enlarges the civil list. WESTERN AUSTRALIA.

No. 22. The Transfer of Land Act, 1893, Amendment Act, 1896, provides that, should Her Majesty become a registered proprietor of land, such land is thereby withdrawn from the operation of the Act, and is revested in Her, as of Her former estate. Real property.

No. 24. The Judges' Pension Act, 1896, subject to certain provisoes, entitles judges of the Supreme Court, sixty years of age, and of fifteen years' service, or when permanently incapacitated, to pension at half salary, thus amending, though not expressly, the superannuation Act of 1871. Judges' pensions.

No. 25. The Colonial Passengers Act, 1896, consolidates the law of the Colony on the subject, and embodies certain provisions of the Imperial Merchant Shipping Act, 1894 (57 & 58, Vict. c. 60), including a Marine Examining Board and a Board of Marine Enquiry. Coastal traffic.

No. 26. The Agricultural Lands Purchase Act, 1896, empowers the Governor, on the advice of a board, to accept surrenders of alienated lands, and to sell them to selectors upon improving leases subject to certain conditions. Settlement of the country.

No. 30. This Act constitutes wardens of goldfields justices of the peace, and empowers clerks of Petty Sessions or Local Courts and Mining Registrars to administer oaths. Administration of justice.

The other Acts consist of—

(*a*) Appropriation and Supply Acts.

(*b*) Acts for the construction of various railways.

(*c*) (No. 12.) The Coolgardie Goldfields Water Supply Loan Act, 1896, 2½ millions.

(*d*) (No. 28.) The Loan Act, 1896, authorizing the raising of 3½ millions for railways and rolling-stock, development of goldfields, dock and harbour works, water supply and sewerage.

(*e*) (No. 36.) The Goldfields Act Amendment Act, 1896, which empowers private persons with the consent of the minister for mines to construct tramways and erect electric lines on goldfields.

(*f*) (No. 43.) The Great Southern Railway Act, 1896, authorizing the Governor to purchase all the interests of the West Australian Land Company, Limited.

(*g*) Various minor measures, chiefly amendments.

The two Private Acts call for no comment.

7. NEW ZEALAND.[1]

[*Contributed by F. F. Liddell, Esq.*]

Acts passed—General, 64; Local, 18; Private, 1; Total, 83.

Elections. Two Acts deal with the law as to elections—

(1) The Representation Act Amendment Act, 1896 (No. 2), appoints two permanent commissions, one for North Island and one for Middle Island, for forming and adjusting electoral districts. These commissions are substituted for the single commission appointed by the Representation Act, 1887 (No. 7), all the powers[2] of which are transferred to the new commissions. The commissions are to sit together for determining the number of the electoral districts in the two islands, but afterwards are to exercise their powers separately, each being confined to the island in respect in which it is appointed.

(2) The Electoral Act Amendment Act, 1896 (No. 49), amends the Electoral Act, 1893 (No. 18), which consolidated the law relating to the qualifications and registration of electors, and the conduct of elections of members of the House of Representatives, in various particulars. The most important of these amendments are the following:—

(1) The non-residential qualification is abolished (except with respect to persons already registered).

(2) Special provisions are enacted with respect to inquiries to be made by registrars into seamen's claims to be registered.

(3) The Registrar is to notify all persons whose claims are sent in after the printing of the general roll that they have been duly enrolled.

(4) The Registrar is to send applications for transfer to the Registrar of the district to which the elector wishes his name transferred.

(5) Any Registrar who strikes off or places on any roll the name of an elector in consequence of the redistribution of electorates is forthwith to give notice of having done so to the registrars of the adjoining electorates.

(6) Provision is made for the altering on the roll the name of a woman who marries.

[1] The Session began on the 11th of June, and ended on the 17th of October, 1896.

[2] The chief power given by the Act of 1887, is that of dividing the Colony into electoral districts.

(7) Primary schools, appointed by the Governor, are to be placed at the disposal of the Returning Officer as polling places.

(8) The Returning Officer may appoint as many deputies as he requires, and any such deputy, if an elector, may vote, but is not to have an additional, or casting vote.

(9) An elector's right to have his name enrolled is not to be granted after the issue of a writ for an election until the completion of the election.

(10) If a candidate withdraws, the deposit paid under s. 77 of the Act of 1893 is to be returned to the person who paid it.

(11) Notice of the erasure of any person's name from the roll of electors under s. 126 of the Act of 1893 is to be sent to that person by the Registrar; and that section is restricted to elections of members of the House of Representatives.

Rating.

Rating is the subject of two Acts.[1]

The Rating on Unimproved Value Act, 1896 (No. 5), enables districts—defined to mean "any borough or county," and to include "any town district or road district within any county wherein the Counties Act, 1886 (No. 49), is suspended or the County Council does not levy a general rate," and "any town district for the purpose of making and levying town board rates"—to adopt unimproved value as defined by the Act as the basis of assessment for rating purposes. Unimproved value is defined to mean the gross value of land, that is to say, the capital value of land with all improvements thereon, as assessed by the local authority of the district, less the value of improvements thereon.

In order that the Act may be adopted, there must be a demand by—

(*a*) 25 per cent. of the ratepayers if the number of ratepayers does not exceed 100;

(*b*) 20 per cent. if the number exceeds 100 but does not exceed 300;

(*c*) 15 per cent. if the number exceeds 300.

After the demand has been made a poll of the ratepayers is to be taken, and the proposal is not to be deemed carried unless affirmed by a majority of the votes recorded, and at least one-third of the ratepayers record their votes.

The proposal if adopted may be rescinded in a similar manner.

Where a proposal either for the adoption of the Act or for the rescission of a previous adoption has been submitted to ratepayers, a new proposal is not to be submitted for a period of three years, whether or not the first proposal was carried.

[1] And see Government Valuation of Land Act, *post*, p. 197.

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The Rating Act Amendment Act, 1896 (No. 40), provides procedure for making and levying rates on native land when the owners or occupiers exceed four in number.

The Act also exempts machinery from being rated, and makes other small amendments in the Rating Act, 1894 (No. 24), which consolidated the law for regulating the making and levying of rates in the colony.[1]

Municipal corporations.

Two Acts deal with municipal corporations. One, the Municipal Corporations Act, 1886, Amendment Act, 1896 (No. 9), removes the disqualification on voting as a burgess on account of non-payment of rates if the person whose name appears on the defaulters' list by reason of such non-payment pays all rates, costs, and penalties due by him before recording his vote. The rate-collector's receipt is to be sufficient authority to the returning officer to allow the defaulter to record his vote.

The principal amendment introduced by the Act (No. 26)—the Municipal Corporation Act, 1886, Amendment Act, 1896 (No. 2)—relates to the stopping of streets by borough councils. For this purpose the Act enacts that no street is to be stopped, without the consent in writing of the owners of land in the vicinity, unless and until an equally convenient way to that land has been provided;[2] and no street along a river bank or along the margin of the sea is to be stopped either with or without consent.

The steps necessary to be taken before a street is closed are as follows:—

(1) A plan of the streets proposed to be closed, and of the new streets (if any) showing the lands through which it is proposed to pass, is to be prepared, and the plan is to be open to public inspection.

(2) Notice of the proposed stoppage is to be fixed in a conspicuous place at each end of the street.

(3) A copy of the notice and plans is to be sent for record in the office of the chief surveyor of the district.

(4) The borough council are to call a meeting of the ratepayers of the district (*i.e.* the persons entitled to vote at the election of a member of the borough council), and the meeting is to decide by a majority of the ratepayers present whether or not the street shall be stopped.

(5) If the meeting decides that the street is not to be stopped, the

[1] As to this Act, see *Journal*, vol. i. p. 77.

[2] Compare s. 85 of the English Highway Act, 1835 (5 & 6 Will. IV. c. 50), of which the Colonial Act is an adaptation. See *R.* v. *Surrey Justices* [1892], 1 Q. B. 632, 867.

decision is to be final, and no further steps are to be taken by the Council for one year thereafter.

(6) If the meeting decides that the street is to be stopped, the council are to send the plans, with a full description of the proposed alterations, and their decision thereon to the stipendiary magistrate.

(7) The magistrate may, after consideration, either confirm or reverse the decision of the ratepayers, and his decision is to be final.

(8) If the magistrate reverses the decision of the ratepayers, no proceedings are to be entertained by him for stopping the street for two years thereafter.

(9) If the magistrate confirms the decision of the ratepayers, the borough council may declare by public notice that the street is stopped, and the street is thereafter to cease to be a public highway.

Legal profession (women). Two Acts, the Female Law Practitioners Act, 1896 (No. 11), and the Law Practitioners and New Zealand Law Society Acts Amendment Act, 1896 (No. 22), authorize women to enter as candidates for admission, and to be enrolled as barristers or solicitors.

Mortuaries. The Public Morgues Act, 1896 (No. 12), imposes the obligation of providing a public morgue on the local authority of every city or borough which has 1000 or more inhabitants.

Separation. The Married Persons Summary Separation Act, 1896 (No. 15), applies to the Colony the Imperial Summary Jurisdiction (Married Women) Act, 1895 (58 & 59 Vict. c. 39), but gives the remedy provided by that Act equally to the husband as to the wife.

Copyright (photographs). The protection of the copyright law is extended to photographs by the Photographic Copyright Act, 1896 (No. 16). The period of protection is limited to five years. The Act does not apply to photographs for the taking of which valuable consideration has been given.[1]

Revenue. Amongst the amendments introduced by the Public Revenues Acts Amendment Act, 1896 (No. 17), the most important are the following:—

(1) The Colonial Treasurer is authorized to issue and pay moneys during the three months after the commencement of each financial year, if no Act is passed granting and appropriating money for the service thereof; but the amount so paid is not in respect of any service (1) to exceed the unexpended balance of the vote for the service in the

[1] Compare the Imperial Fine Art Copyright Act, 1862, 25 & 26 Vict. c. 68; and see *Melville* v. *Mirror of Life Co.*, Law Reports [1895], 2 Ch. 531.

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previous year, together with an amount equal to one fourth of that vote, or (2) to be in excess of the scale set forth in the Appropriation Acts and estimates of the previous year.

(2) Quarterly and yearly abstracts of the public revenue and expenditure are to be published and audited.

(3) If the audit office finds that money has been applied by a local authority without lawful authority, the members of the authority who fail to satisfy the audit office that the money was applied without their knowledge or subject to their written protest, are to be jointly and severally surcharged with the amount thereof.

Slaughter-houses.

The Abattoirs and Slaughterhouses Act Amendment Act, 1896 (No. 18), amends s. 51 of the Abattoirs and Slaughterhouses Act, 1894 (No. 30), which exempted *bonâ fide* farmers from the provisions of the Act, by restricting the exemption to any *bonâ fide* farmer who, as incident to his farming operations, slaughters on his farm for sale or barter not more than one head of large or five head of small cattle in any one week. But this exemption is not to apply if the cattle are sold and bartered to a butcher or to a person in or within five miles of a town, or if the farm is situated within five miles of a town.

Coloured races.

Two Acts deal with the vexed question of alien immigration. One, the Chinese Immigrants Act Amendment Act, 1896 (No. 19), is a temporary measure to remain in force only until the other—the Asiatic Restriction Act, 1896 (No. 64)—which has been reserved for the signification of Her Majesty's pleasure, and has not yet received the Royal assent, comes into force.

The first Act merely increases the poll-tax on immigrant Chinese from £10 to £100, and limits the number of Chinese which may be carried on ships coming to New Zealand to one for every two hundred (instead of one for every one hundred) tons of the ship's tonnage.

The second applies not only to Chinese, but to all Asiatics. Asiatic is defined to mean "any native of any part of Asia or of the islands adjacent to Asia or in Asiatic seas, and the descendants of any such natives"; but it does not include "(1) persons of European or Jewish extraction, nor (2) British subjects being natives of that portion of Her Majesty's dominions known as the Indian Empire."

If a ship arrives at any place in the colony having on board more than one Asiatic for every two hundred tons of tonnage, the owner and master of the ship are made severally liable to a penalty not exceeding £100 for every Asiatic so carried in excess.

The master of the ship is to furnish a list of Asiatics carried, and before making an entry at the Customs is to pay a poll-tax of £100 for

every Asiatic carried. Heavy penalties are imposed on the master and on every Asiatic attempting to evade the law. The crew of the ship, unless discharged, are to be exempt from the provisions of the Act. No ship is to be cleared till the Act has been complied with, and a ship may be seized and sold if default is made in the payments due under the Act.

Non-naturalized Asiatics are to be deemed aliens, and in the future no Chinese (except ministers of religion) can be naturalized.

Infant's life protection.

The Infant Life Protection Act, 1896 (No. 23), is substituted for the Act of 1893 (No. 35), and follows the precedent of the (Imperial) Infant Life Protection Act, 1872 (35 & 36 Vict. c. 38),[1] being designed, like the last-mentioned Act, to prevent the abuses of the "baby-farming" system. For this purpose the registration of keepers of infant homes is made compulsory.

Loans to settlers.

The Government Advances to Settlers Act Amendment Act, 1896 (No. 25), amends the Government Advances to Settlers Act, 1894 (No. 38),[2] in certain particulars. It enables advances on the security of freehold lands to be granted for any time not exceeding ten years, provided that—

(1) The value of the loan does not exceed one half the value of the security;

(2) The application for the loan is made in the proper form and specifies the term of the loan;

(3) The loan is to be repayable (without a sinking fund) at the end of the term, but the mortgagor may, on any day on which the half-yearly interest is payable, repay £5 or any multiple of £5;

(4) The rate of interest on the loan, or so much of the loan as remains unpaid, is to be £5 per cent. per annum payable half-yearly.

The Act provides for docketing the loans, and specifies the covenants to be implied on any such loan.

The Act also makes some minor amendments in the Government Advances to Settlers Act Amendment Act, 1895 (No. 42).[3]

Native lands.

A considerable number of Acts deal with native lands,[4] and generally show the same tendency as that noticed in vol. i. of this journal, p. 67.

(1) The Urewera District Native Reserve Act, 1896 (No. 27), provides for the appointment of a commission, consisting of two Europeans

[1] Now replaced by the Infant Life Protection Act, 1897 (60 & 61 Vict. c. 57).

[2] See *Journal*, vol. i. p. 78.

[3] *Ibid.* p. 78.

[4] See also under Rating, above, p. 185.

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and five natives, for the purpose of ascertaining the ownership of native lands constituting the Urewera District, in such manner as not being inconsistent with native customs and usages will meet the views of the native owners generally and the equities of each particular case. Persons aggrieved by any order of the commission may appeal to the Minister of Native affairs, whose decision is to be final. The Minister may, instead of confirming the order, refer it to the Governor in Council, who may confer jurisdiction on the Native Land Court to deal with it under the provisions of the Act. The Governor in Council may also confer jurisdiction on the Native Land Court to determine succession claims and for any other specific purpose relating to the district. But except in so far as otherwise expressly provided, the Native Reserves Act, 1882 (No. 52), and the Native Land Court Act, 1894 (No. 43), are not to have any operation within the district.

The Act also provides for the local government of the district by means of local committees and a general committee. The local committees are to consist of persons appointed by the owners of the blocks of land into which the district is to be divided, and each local committee is to elect one of its members to be a member of the general committee. The general committee is, subject to regulations, to deal with all questions affecting the district as a whole, or affecting any portion thereof in relation to persons other than the owners thereof. The powers of the local committees and of the general committee are to be prescribed by the Governor in Council, but the powers of each local committee are to be confined to the internal affairs of their block.

Provisions are added for taking land within the district for mining purposes, roads, and public works.

(2) The Native Reserves Act Amendment Act, 1896 (No. 41), vests in the Public Trustee certain native lands,[1] the proceeds from the dealings with which are to be employed for the benefit of the native beneficiaries and the natives generally in certain proportions.

(3) The Native Land Laws Amendment Act, 1896 (No. 53), authorizes the Governor to appoint any Registrar of the Court (defined to include the Native Land Court and the Native Appellate Court) or other permanent civil servant to be a sub-commissioner of the Court, and as such to have jurisdiction to exercise all the powers of the Native Land Court under s. 14 (3) and (4)[2] of the Native Land Court Act, 1894 (No.

[1] Some of the land so vested is the burial-ground of the Ngatitoa tribe, and the reason given in the preamble for vesting it in the Public Trustee is that "the surviving members of that tribe are few in number."

[2] S. 14 (3) and (4) enables the Land Court to effect exchanges of land and to determine successions.

43), under s. 3 of the Maori Real Estate Management Act, 1888 (No. 39),[1] and such further powers of the Native Land Court as the Governor, by order in council, directs (ss. 3–5).

The Act enables the Court to refuse to confirm a lease on the ground that the rent is inadequate (s. 7), and makes various provisions relating to security for and payment of costs (ss. 8, 10, 11).

The payment to the Public Trustee of any money found in any proceeding in the Court to be due to a minor is authorized (s. 9).

The Act further alters the constitution of the Validation Court, and limits the time within which applications under the Native Land (Validation of Titles) Act, 1893 (No. 38), may be made.

Fisheries.

The Sea-fisheries Act Amendment Act, 1896 (No. 29), enables the Governor by Order in Council (subject to certain relaxations in favour of the native population) to declare—

(1) Any particular species of edible shell-fish (other than oysters); or

(2) Sponges and sponge-beds, either generally or any particular species thereof,

to be subject to such of the provisions of the Sea-fisheries Act, 1894 (No. 56),[2] as are specified in the order.

Local loans and public works.

The Government Loans to Local Bodies Act Amendment Act, 1896 (No. 30), makes various amendments in the Government Loans to Local Bodies Act, 1886 (No. 48), an Act which enabled local bodies to construct certain public works, and empowered the Colonial Government to finance them for the purpose.

The Act extends the definition of districts in s. 2 of the Act of 1886, so as to include a water supply district, and also such other local governing areas as the Governor declares to be districts within the meaning of that section; but limits the amount which can be lent in any one year to the local authority of a water or other such district.

Certain local authorities which have raised loans under the Act of 1886 for the purpose of constructing waterworks, are enabled to sell surplus water outside their districts, but all revenue received by the authority in exercise of this power is to be applied towards the payment of the interest and charges in respect of the loan.

The provisions of the principal Act relating to the construction of a public work are extended to the acquisition of a public work.

Every special rating district is to consist of a continuous area contained within continuous boundaries, and all rateable property within the area is to be rated for a loan under the principal Act.

[1] This Act provides for the management of real estate of infants and others of the Maori race under disability.

[2] This Act consolidates the laws of the Colony relating to sea fisheries.

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The Colonial Treasurer is authorized to accept from any local authority the repayment in whole or in part of any loan raised by the authority under the special Act notwithstanding that the period for which the loan was borrowed has not expired, or that the public work for which the loan was borrowed has not been completed.

As an additional remedy, when default has been made in payment of interest by a local authority, the amount of such interest with an additional charge at the rate of 5 per cent. per annum is made recoverable from the defaulting authority as a debt due to the Crown.

The Act also empowers local authorities, if authorized so to do by a poll of ratepayers taken in the manner prescribed by the Counties Act, 1886 (No. 49), to levy, in addition to other general and special rates, a special bridge rate for the purpose of providing funds for the reconstruction of bridges. The bridge rate is not in any year to exceed one farthing in the pound, and is to be levied either on the whole county, if the reconstruction of the bridge is for the benefit of the county, or on one or more ridings specially benefited. The County Council may also apply to the Colonial Treasurer for a loan when it becomes necessary to renew a bridge of over thirty feet span, and the Colonial Treasurer, on being satisfied that the circumstances of the case warrant him in so doing, may grant the loan without reference to the ratepayers of the county.

Factories and workshops.

The Factories Act Amendment Act, 1896 (No. 31), prohibits the subletting of work let or given out by the occupiers of textile factories and workshops, and makes provisions similar to but more stringent than those of s. 6 of the (Imperial) Factory and Workshop Act, 1895 (58 & 59 Vict. c. 37), designed to prevent the spread of contagious and infectious diseases, when a factory or workshop is or has been infected.

Inspection of machinery.

The Inspection of Machinery Act Amendment Act, 1896 (No. 32), amends in various details the Inspection of Machinery Act, 1882 (No. 59), which requires machinery to be inspected, and generally regulates the use of machinery in the colony.

The chief amendments are the limitation of the duration of a certificate to one year except in a few cases when the limit is two years, and the extension of the application of the Act of 1882 to all machinery worked by steam, water, electricity, and used in "any manufacturing or industrial process."

Shop hours regulation.

The Shops and Shop-assistants Act Amendment Act, 1896 (No. 33), extends the Shops and Shop-assistants Act, 1894 (No. 32),[1] to persons in the shopkeeper's employment, other than commercial travellers, who sell or deliver his goods or canvass for orders for his goods, whether or

[1] See *Journal*, vol. i. p. 84.

not actually employed at any time inside his shop, and to hawkers and pedlars and other persons carrying on business by selling or offering goods for sale by retail otherwise than in a shop.

Where persons are employed partly in a shop and partly in a workroom in connection with the shop, and the Inspector is of opinion that the principal employment of the person is in connection with the shop, compliance with the provisions of the Act of 1894 with respect to half-holidays is to suffice.

The hours of closing are fixed at five o'clock on week-days and one o'clock on Saturdays, subject to a proviso excepting ten days in each month when the employees may be required to work an extra three hours.

Mines.

Two Acts deal with Mines and Mining Companies.

1. The Mining Companies Acts Amendment Act, 1896 (No. 34), authorizes companies registered under the Mining Companies Act, 1894 (No. 51), to keep branch registers.

The Act also explains the Mining Companies Act Amendment Act, 1895 (No. 25),[1] as authorizing contracts by a mining company to sell its undertaking to an existing or new company, and for the allotment of fully paid-up shares in the new to the old company as consideration, either in part or in whole, for the purchase.

2. The Mining Act Amendment Act, 1896 (No. 51), amends the Mining Act, 1891 (No. 33),[2] in many details and in particular respecting the prospecting for minerals (ss. 4–10), and the resumption for mining purposes of certain land (ss. 11–28). The land to which the provisions as to prospecting and resumption are limited is:—

(1) Land situated in an existing mining district and alienated from the Crown before the 29th of September, 1873; and—

(2) Native land alienated from the native owners to any person other than the Crown before the 30th of August, 1883.

All such land is declared by this Act to be open for prospecting without the consent of the owners or occupiers, and liable to be resumed for mining purposes.

The Act regulates the granting of prospecting licences and the compensation payable in respect of damage caused by prospecting.

Land may be resumed for mining purposes by the Minister of Mines upon a report of the Warden of the mining district, the report being made on the application of any person.

The Act further, for the purpose of providing against the difficulty experienced in procuring duly certificated mine managers, authorizes

[1] See *Journal*, vol. i. p. 72.

[2] In this Act the law relating to mines and mining is consolidated.

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the temporary appointment of persons holding warrants to act as provisional mine managers (s. 32).

A few safety provisions are also inserted. The use of appliances to prevent the accumulation of quartz dust is required, and the number of persons lowered or raised in a single cage is regulated (ss. 44, 45).

With regard to native land, a majority of the owners of the land may decide that the compensation payable by the licensee of a licensed holding or special claim should be computed as in the case of land other than native land (s. 53).

Timber rights are safe-guarded, and injury to the surface of land is in certain cases forbidden (ss. 53, 54).

Transfer of chattels.

The Chattels Transfer Act Amendment Act, 1896 (No. 35), amends the Chattels Transfer Act, 1889 (No. 13), by authorizing the registration of instruments under the Act of 1889 to be effected by any Registrar in any provincial district, and by fixing twenty-one days as the time within which the instrument is to be registered.

Settlements.

The Land for Settlements Act Amendment Act, 1896 (No. 36), makes the following provisions for the disposal of land acquired under the Land for Settlements Act, 1894 (No. 37)[1]:—

(1) The block of land to be disposed of is to be divided into such allotments (not exceeding the area prescribed by the Land Act, 1892 (No. 37)),[2] as the Minister of Lands determines.

(2) The allotments are to be numbered, and, where required, balloted for in accordance with the Land Act, 1892.

(3) No applicant is to be entitled to obtain more than one allotment.

(4) Applicants who are landless[3] are to have preference over those who are not.

The Land Board may reject an application, and the applicant is to deposit one half-year's rent and one guinea to defray the cost of the lease. If the applicant obtains an allotment, the amount of a half-year's rent of this allotment is to be retained and the residue returned to him. If he is unsuccessful, the whole of the sum deposited is to be returned.

If buildings are situated on the land at the time of its disposal, the value of the buildings is to be separated from the value of the land, and

[1] See *Journal*, vol. i. p. 77.

[2] This Act amends the law as to the sale and disposal of Crown lands.

[3] An applicant is to be considered landless unless he holds, if the application is for town land, sufficient town land for a home for himself and his family, or if the application is for rural land, sufficient rural land for the maintenance of himself and his family.

the rental prescribed by s. 3 of the Act of 1894 is to be computed on the value of the land apart from the buildings.

The value of the buildings, with interest at the rate of 5 per cent. per annum, is to be repaid by half-yearly instalments, extending over a period not less than seven nor more than twenty-one years. The commencement of the period for repayment may be postponed for two years.

A lessee of land under the Act is prohibited from transferring, subletting, or in any way parting with, mortgaging, or charging his lease or any portion of his interest therein for a period of five years, except on the recommendation of the Land Board with the approval of the Minister of Lands.

Tenants in occupation of land acquired under the Act of 1894 may, subject to certain conditions, obtain a lease in perpetuity of any area of such land not exceeding 640 acres.

Where low-lying land, or land suitable for a homestead site, is acquired under the Act of 1894, the land may be disposed of to the lessee or licensee of the neighbouring high-lying or pastoral land and on the same tenure, except that the rent is to be determined in accordance with the Act of 1894, and on the expiration, or sooner determination, of the lease or license of the high-lying land the lease of the low-lying land is to determine, and the lessee is to be entitled to compensation for improvements, in accordance with the Land Act, 1892.

Regulations may be made with respect to advances, not exceeding £20, to successful applicants for allotments in aid of fencing, planting, and building. The advances are to be repayable by equal half-yearly instalments extending over a period not exceeding ten years.

With respect to allotments disposed of for workmen's homes, special provisions are made, the most important of which is that the allotment is not to exceed three acres.

Portions of the land acquired under the Act of 1894 may be used for the purposes of state or experimental farms.

Shipping.

The Shipping and Seamen Act Amendment Act, 1896 (No. 37), contains provisions as to the rating and certificates of engineers,[1] the number of engineers to be carried on sea-going steamships, and the ventilation of engine-rooms.

The most important section of the Act is that, providing that ". . . whenever the master, owner, or agent of any ship

(1) engages seamen in the Colony; or

[1] S. 102 of the (Imperial) Merchant Shipping Act, 1894 (57 & 58 Vict. c. 60) relates to Colonial certificates of competency. No order in Council has been issued in the case of Act No. 37 of 1896.

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(2) having engaged them abroad employs them in the Colony, such seamen whilst so employed shall be paid, and may recover the current rate of wages for the time being ruling in the Colony, and in the former case the engagement may be determined in the Colony at any time after the ship's arrival at her final port of discharge in the Colony, consequent on the completion of a round voyage by twenty-four hours' previous notice on either side."

Provided that this section shall not apply to ships arriving from abroad with passengers or cargo, but not trading in the Colony further or otherwise than for the purpose of discharging such original passengers or cargo in the Colony, and there shipping fresh passengers and cargo to be carried abroad.

Provided further that a collector of Customs may, upon the application of an officer of a charitable institution, grant a permit in any special case to the master of a ship to engage a seaman at less than the current rate of wages for a particular voyage to be specified in the permit. There is nothing in the Act to confine this provision to ships on the Colonial register.[1]

A seaman discharged in the Colony before completing the full term of his engagement, may recover the full amount of his wages due up to the date of his discharge (s. 11). Contracts conflicting with the above provisions are avoided (s. 12).

The Act requires accidents to sailing ships to be reported, and amends the Shipping and Seamen's Act, 1877 (No. 54), and the Amending Act of 1894 (No. 62) as to the fees payable for surveying the load line and for licenses to carry deck cargo, as to the imprisonment of seamen, and as to the number of apprentices to be carried on sailing vessels engaged in the "coastal and inter-Colonial trade."

Railways.

The Government Railways Department Classification Act, 1886 (No. 42), classifies and regulates the rates of payment of persons employed on the State railways.

Powers of public authorities.

The Public Bodies' Powers Act, 1887, Amendment Act, 1896 (No. 43), extends the powers of the Act of 1887 [2] to trustees of property held for religious, charitable, educational, or scientific trust

[1] The provisions as to wages were discussed by various writers in the *Times*, September, 1897.

[2] The Public Bodies' Powers Act, 1887 (No. 34), authorized certain public bodies (referred to in the Act as leasing authorities) to grant leases of their lands for terms not exceeding twenty-one years.

purposes, by making the expression "leasing authority" in that Act include such trustees.

Valuation.

The Government Valuation of Land Act, 1896 (No. 44), provides for the preparation of a general valuation roll of all landed properties in the Colony. For this purpose the Governor by order in Council may divide the Colony into special districts, and may appoint a Valuer-General and District Valuers.

The general valuation roll is to be compiled from the district rolls, and altered from time to time, so as to correspond with the district rolls. It is to set forth

(1) the name of the occupier and owner within the meaning of the Rating Act, 1894 (No. 24);[1]

(2) the area and description of the land, stating the number and nature of the buildings thereon, and the total capital value thereof; the nature and total capital value of all improvements other than buildings; the total capital value of the whole property, and the unimproved value of the land;

(3) such other particulars as are prescribed.

The district valuation roll is to be prepared at such periodical intervals as the Governor in Council prescribes, and is to continue in force until a fresh roll is made, subject to such alterations as may be made by the district valuers in the meanwhile. Any person may require the Valuer-General to make a new valuation of his property at any time on payment of the prescribed fee. The roll is to be open to inspection. The General Valuation Roll is to be the standard roll for the local authorities, to whom copies of the roll, so far as it relates to properties in their districts, are to be supplied, and is to be used for the purpose of the Rating Act, 1894 (No. 24).[1]

The roll is also to be used for the assessment of land tax, stamp duties, and death duties, and for mortgages of land by various public departments.

Where land is taken under the Land for Settlements Act, 1894 (No. 37),[2] or the Public Works Act, 1894 (No. 42), the compensation to be offered is to be not less than the valuation of the land appearing on the roll, but if the offer is not accepted by the owner, then the compensation to be paid is to be assessed in the manner directed by those Acts respectively.

Certified copies from the roll are to be supplied on application and payment of the prescribed fee, and any such certified copy is to be

[1] As to this Consolidating Act, see *Journal*, vol. i. p. 77, and also above, p. 185.

[2] See *ante*, p. 194.

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deemed "a competent surveyor's report" within the meaning and for the purposes of the Trustees Act, 1883, Amendment Act, 1891 (No. 13).

Diseases of plants.

For the purpose of preventing the introduction and of providing for the eradication of diseases affecting orchards and gardens,[1] the Orchard and Gardens Pests Act, 1896 (No. 45), enables the Governor to prohibit and regulate the importation of plants. Plants unlawfully introduced may be destroyed. Inspectors are given powers of entry and inspection, and of requiring measures to be taken for the eradication or the prevention of the spread of disease. The Minister of Agriculture may declare any place to be an infected place, from which no plants are to be removed except under the direction of the inspector, and within which the owner or occupier is to do all things necessary to eradicate, or check the spread of, disease. Notice of the existence of disease is to be given by owners and occupiers; and fruit trees are to be dressed every autumn or winter. No compensation is payable under this Act in respect of any measure taken for the destruction of any plant or in respect of any resulting loss.

Canterbury College.

The Canterbury College and Canterbury Agricultural College Act, 1896 (No. 46), provides for the separation of the Lincoln Agricultural College (to be called in the future the Canterbury Agricultural College) from the Canterbury College, and regulates the constitutions of the two colleges so separated.

The Board of the Agricultural College are given a very wide liberty of action in the interests of agricultural education, and are allowed to carry on such experimental and other farming operations as are deemed expedient efficiently to instruct the students, and to acquire land, implements, stock, and materials for that purpose (s. 51).

Electrical motive power.

The Electrical Motive Power Act, 1896 (No. 47), prohibits local authorities from granting to any person any right or concession for the purpose of generating or using electricity as a motive power without in each instance the previous consent of the Governor by order in council; and enables the Governor in council to cause inquiries to be made as to the feasibility of using the waterways of the colony for the purpose of supplying electrical motive power for use on the gold-fields.

Naval and military claims.

The Naval and Military Claims Settlement and Extinguishment Act, 1896 (No. 50), repeals part of the Naval and Military Settlers' and Volunteers' Land Act, 1892[2] (No. 46), which had been found to work

[1] Compare the (Imperial) Destructive Insects Act, 1877 (40 & 41 Vict. c. 69).

[2] An Act of 1889 (No. 28) defines the persons entitled to claim land grants as naval, military, or volunteer settlers. They include persons formerly in imperial service who took part in the suppression of the Maori risings; and persons who

great hardships in many cases,[1] and authorized the Governor to appoint a commissioner for the whole Colony to inquire into and classify the various claims, and to take such further evidence as he deems necessary for enabling the Government to dispose finally of the claims.

Old age pensions.

For the purpose of ascertaining the probable cost of an old age pension fund, the Registration of the People's Claims Act, 1896 (No. 54), provides that every person is to be entitled to a pension certificate who, at the commencement of the Act, is sixty-five years old or more, provided that—

(1) he is resident in the Colony at that date; and
(2) he has so resided not less than twenty years in all; and
(3) he has so resided continuously for not less than three years immediately preceding that date; and
(4) he has not been absent from the Colony for more than eighteen months in all during the ten years immediately preceding that date; and
(5) his total income from all sources (exclusive of his personal earnings) does not exceed the rate of £50 a year.

For the purpose of reckoning residence, a person whilst in prison is to be deemed absent from and not residing in the Colony.

The Colony is to be divided into districts, and a Registrar, who is, subject to the control of the Colonial Treasurer, to have the general administration of the Act, and a deputy-registrar for each district are to be appointed, with such powers as the Governor determines.

The deputy-registrar is to investigate all claims for pension certificates sent to him, for which purpose he may administer oaths. No claim is to be admitted unless the evidence of the claimant is corroborated on all material points.

The deputy-registrar may admit, postpone for further evidence, or reject the claim, and is to notify his decision to the claimant. If he admits the claim he is to issue a certificate to the claimant.

Matters proved under the Act are to be available for the purposes of the Pension Fund if subsequently established.

Intoxicating liquors.

The Alcoholic Liquors Inspection Act, 1896 (No. 55), confers on special Inspectors appointed under the Alcoholic Liquors Sale Control Act Amendment Act, 1895 (No. 45), the powers of an Inspector and

retired with a "good character" from the imperial service before 1869 and settled in New Zealand; and certain forest rangers who served in the Maori War, and colonial volunteers of five years' continuous and efficient service, enrolled before November, 1876.

[1] Many claims had been rejected on the score of the claimant's character not coming within the meaning of "good" as interpreted, and on other technical grounds.

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also of an Analyst under the Adulteration Prevention Act, 1880 (No. 20).

Industrial arbitration conciliation.

The Industrial Conciliation and Arbitration Act Amendment Act, 1896 (No. 57), amends the Industrial Conciliation and Arbitration Act, 1894[1] (No. 14), by prohibiting members of one board from being nominated for or elected on another, and by avoiding nominations of one person for election on more Boards than one. The Act also authorizes the joinder of an employer, association, trade union, or industrial union as a party to an industrial dispute referred for settlement to a Board or the Court at any stage of the proceedings. In the case of an incorporated or registered company, the directors are sufficiently to represent the members of the company for the purpose of an application to register as an industrial union of employers.[2]

Tobacco.

Two Acts deal with tobacco.

(1) The Tobacco Act Amendment Act, 1896 (No. 58), requires packages of manufactured tobacco to be labelled with the name and address of the licensed manufacturer.

(*a*) dutiable goods used for sweetening and flavouring tobacco may be permitted to be used for that purpose in a bonded manufactory without payment of import duty;

(*b*) all materials used in the manufacture of tobacco may be allowed to be stored in a bonded manufactory;

(*c*) waste products resulting from the manufacture of tobacco may be allowed to be used for the manufacture of sheep-dip and the like without payment of duty.

The definition of "tobacco manufactures" in the Tobacco Act, 1879 (No. 16), is extended to include the manufacturer of any tobacco, whether in a raw state or not.

The Act provides for the issue of warrants authorizing the use of a cutting-machine for the manufacture of cigarettes and the making of cigarettes by hand.

Customs officers and other duly authorized persons are empowered to enter and search premises for tobacco on which duty has not been paid.

(2) By the Tobacco Excise Duties Act, 1896 (No. 59), the following excise duties are made payable on tobacco manufactured in the Colony in lieu of the duties previously charged:—

On tobacco, 1*s.* the pound.

On cigars and snuff, 1*s.* 6*d.* the pound.

[1] See *Journal*, vol. i. p. 73.

[2] *I.e.* a society of not less than seven persons registered under the Act of 1894 for the purpose of protecting or furthering the interests of employers.

On cigarettes, if manufactured by machinery, 2*s.* 6*d.* the pound.
If made by hand, 1*s.* the pound.

Cigarettes made by hand from duty paid tobacco outside a bonded factory are not to be deemed tobacco manufactured in the Colony.

Income tax and land tax.

Under the Land Tax and Income Tax Act, 1896 (No. 60), land tax and income tax at the same rates as in 1895[1] are imposed.

8. FIJI.

[*Contributed by W. F. Craies, Esq.*]

Ordinances passed, 10.

Indian immigrants.

Ord. No. 1 permits the transfer of an Indian immigrant[2] serving under indenture from one plantation of the same employer to another, or from the plantation of his employer to that of any other employer who is willing to receive him. The transfer is in the discretion of the Governor, and is effected by the Agent-General on the application of the employer.

Railways and tramways.

Ord. No. 2 imposes a penalty, recoverable on summary conviction, on persons who unlawfully or without permission from a person having authority, use or travel on a locomotive, carriage, or truck, or on a railway or tram-line, or by any act or neglect cause an obstruction on such line.

Legal profession.

Ord. No. 4 repeals s. 14 of the Supreme Court Ordinance, 1875, and Ord. No. 19 of 1881, permitting persons who had served or are serving in the Colony in certain specified capacities to be enrolled as barristers or solicitors. It contains a saving as to persons already qualified for enrolment under s. 14 of the Ord. of 1875.

Assault.

Ord. No. 6 increases the penalties on summary conviction for assault and battery where the circumstances or nature of the assault render the ordinary punishment inadequate.[3]

Native lands.

Ord. No. 7 amends the Native Lands Ordinance, 1892. The changes in the law comprise: (1) Empowering a Land Commissioner to punish for contempt committed in his presence when he is sitting judicially (s. 1); (2) providing for the adjustment by Provincial Councils of native land claims as to boundaries, with the assistance of the Land Commissioners, and of the minutes of any inquiry held by them.

[1] See *Journal*, vol. i. pp. 85, 86.
[2] Regulated by Ordinances of 1891, 1892, and 1895.
[3] Cf. the Imperial Act, 24 & 25 Vict. c. 100, s. 43.

Fiji.

The claims, when confirmed or adjusted, if accepted by the claimants, are registered by the Commissioner. The claimants, if dissatisfied with the confirmation or adjustment, may appeal to the Governor in Council (ss. 4, 5); and the Commissioner can also reserve for the same tribunal decisions of the Provincial Council which appear likely to be injurious to an individual or community or any public interest (s. 6).

Arms and warlike stores.

Ord. No. 5 empowers the Governor by proclamation to regulate or prohibit the export of gunpowder, arms, and warlike stores, forbidding clearance, except by licence of the Governor, of a vessel with more than are needed for ordinary use, and regulating the terms on which licences may be granted, and prohibiting exportation of warlike stores to named ports and places.[1] Contraband shipments may be seized, and offenders are summarily punishable by fine (£50), or in default of payment by imprisonment (s. 4).

Post-office.

Ord. 9 requires all foreign letters, packets, and papers, except *bonâ fide* consignee letters, to be sent by post, and requires the senders of consignee letters to stamp them with the ordinary postal rate.

It also makes a similar provision as to country letters, except consignee letters and letters carried by a *bonâ fide* messenger, or letters of introduction, or letters merely conveyed to and from a post-office.

Shipping.

Ord. No. 10 requires vessels at anchor in a harbour to show a white riding light unless exempted by the harbour-master.

9. WESTERN PACIFIC.[1]

[*Contributed by W. F. Craies, Esq.*]

Regulations passed, 4.

Births, deaths, and marriages.

Regulation No. 1 provides for the registration of births, deaths, and marriages of foreigners in British settlements and protectorates (other than the Cook Islands Group Federation), and for the registration of marriages of British subjects in such protectorates and settlements when celebrated by a minister of religion who is not a British subject. It only applies to Christian marriages, and is not compulsory when both parties to a marriage are aboriginal natives of any island or islands in the Pacific (s. 20).

[1] See *Journal*, vol. i. p. 88.

[1] The legislation for the Western Pacific protectorates and settlements and for British subjects in that area is effected by Queen's Regulations, made under the Pacific Order in Council, 1893. (Published in "Statutory Rules and Orders, 1893," pp. 312–405).

WESTERN PACIFIC.

Regulation No. 2 (Native Contract Regulation, 1896) protects aboriginal natives of the Pacific not being traders in respect of contracts entered into with non-native persons, where subject to the jurisdiction of the Court of the High Commissioner.

Contracts with natives.

By s. 1 no native can be sued in the High Commissioner's Court on any contract entered into after the 26th of June, 1896.

By s. 2 a native may sue in the Court on a contract with a non-native, whether fully performed or not, and the Court can give judgment in respect of money paid, work or labour done, or goods supplied, subject to deductions in favour of the non-native party for *quantum meruit* as to his part of the contract, and if the contract is fair and reasonable, for damages for breach of contract by the native party.

By s. 3 contractors with natives for the repair of vessels are given a lien on the vessel for the cost of the repairs.

Native lands.

Regulation No. 3 forbids the alienation of native lands in a number of small islands enumerated in the regulation which are British possessions or under British protectorate. Such land, with the sanction of the High Commissioner, may be leased for twenty-one years, and without his sanction may be taken on a tenancy determinable after not over six months' notice.

Regulation No. 4 restricts the alienation of native lands in the Solomon Islands Protectorate.[1]

10. BRITISH NEW GUINEA.[2]

[*Contributed by W. F. Craies, Esq.*]

Ordinances passed, 2.

The two Ordinances passed in this dependency in 1896 are merely appropriation Ordinances.

[1] Established over the Southern Solomon Islands. (See Pacific Order in Council, 1893.)

[2] As to the constitution of this dependency, see Letters Patent of the 8th of June, 1888 (printed in "Statutory Rules and Orders, Revised," vol. i. pp. 468, *et seq.*). One Ordinance only (Appropriation) was framed in 1895. In 1894 four Ordinances were passed. No. 1 adopted the Queensland Intestacy Act of 1877; No. 2 provided for the protection of wild birds; No. 3 was appropriation; and No. 4 amended the Pearl-shell and Bêche de Mer Fishery Ordinance of 1891.

VI. SOUTH AFRICA.

1. CAPE OF GOOD HOPE.[1]

[*Contributed by Sir Courtenay Ilbert.*]

Acts passed, 38.

Agent-general. THE Agent-General's Act, 1896 (No. 1), authorizes the Governor to appoint an Agent-General for the Colony with an annual salary of £2000.

Rates. The Simon's Town Rates Supply Grant Act, 1896 (No. 2), authorizes the Cape Government to grant to the Municipal Council of Simon's Town £300 a year to meet a corresponding grant of £300 a year from the Imperial Government. Whilst this grant is paid no rate is to be levied in respect of any immoveable property in Simon's Town "vested in Her Majesty or occupied by the Colonial Government for public purposes," notwithstanding anything in the Crown Property Rating Act, 1891.

Jameson raid. The Jameson Raid Select Committee Powers Act, 1896 (No. 4), gives the Select Committee on the Jameson Raid the same powers as a Court of Justice with respect to the disclosure and production of telegraphic messages, and protects witnesses against liability for answering questions or producing documents.

University. The University Incorporation Amendment Act, 1896 (No. 6), amends the University Incorporation Act, 1873, in certain respects, and in particular alters the constitution of the University Council, and empowers the Council to grant degrees in arts, laws, medicine, science, and music.

Sheriff. The Sheriff's Appointment Act, 1896 (No. 13), authorizes the Governor to appoint the Sheriff for the Colony and its dependencies. There is a single Sheriff for the whole Colony.

Crown lands. The Crown Lands Disposal (Bechuanaland) Land Act, 1896 (No. 18), applies the provisions of the Colonial Crown Lands Acts to all Crown lands in the annexed territory of Bechuanaland, "not being lands at present reserved for the use of the natives."

Municipal law. The Municipal Amendment Act, 1896 (No. 20), empowers municipal authorities to execute drainage works and to acquire lands and buildings for purposes of town improvements. The Act is adoptive, and is to be put in force in a municipality by proclamation of the Governor issued in pursuance of a resolution of ratepayers.

[1] The Session 59 Vict. ended in June, 1896.

CAPE OF GOOD HOPE.

The Animal Diseases (Rinderpest) Act, 1896 (No. 22), strengthens the provisions of the Animal Diseases Act, 1893, in cases of rinderpest.

Rinderpest.

Inebriates.

The Inebriates Act, 1896 (No. 32), enables Resident Magistrates to grant licences for inebriate retreats, which are to be inspected by an Inspector of Retreats appointed by the Governor. A justice may by order permit a person admitted to a retreat to live with any trustworthy and respectable person named in the order who is willing to take charge of him for a definite time. There are penalties for offences by licencees, their officers and servants. If an inebriate while detained in a retreat wilfully neglects or refuses to conform to its rules, he may be punished by fine or imprisonment. If an inebriate escapes, he may be apprehended on warrant and brought back. The cause of death of a person detained in a retreat is to be certified by the medical attendant, and a copy of the certificate is to be sent to the Resident Magistrate and other persons.

Courts of justice.

Act 35 of 1896 (which has no short title) consolidates, with amendments, the enactments relating to the Supreme Court of the Colony, and amongst other things regulates its appellate jurisdiction under the Africa Order in Council, 1889, and the Matabeleland Order in Council, 1894.

Harbours.

The Harbour Board Act, 1896 (No. 36), consolidates the Acts relating to three of the Harbour Boards of the Colony. The members of these Boards are partly elected, partly nominated, and partly *ex officio*. The other Harbour Boards are regulated by a general Act of earlier date.

2. NATAL.[1]

[*Contributed by Sir Courtenay Ilbert.*]

Acts passed, 40.

Diseases of animals.

The Cattle Diseases Act, 1896 (No. 1), and the Cattle Diseases Act Amendment Act, 1896 (No. 34), give further powers for the destruction of live stock illegally brought into the Colony, and powers for the Governor to prohibit by proclamation the importation of hides, skins, horns, hoofs, wool, mohair, or any other articles capable of conveying any infectious or contagious distemper or disease.

The second Act also gives further powers for the destruction of animals affected with or exposed to rinderpest, and limits the amount of compensation payable by the Government for animals destroyed.

Extradition.

Act No. 4 amends the Extradition Act, 1895, by substituting for

[1] The fourth session of the first Parliament ended July 29, 1896.

NATAL.

proof of reciprocal provisions having been made by treaty proof of intention to apply the Act in the case of a particular foreign country.

Registration of births. Act No. 5 provides for the registration of marriages of natives by Christian rites, and of the births and deaths of Christian natives.

Marriage. The Indian Immigration Act, 1896 (No. 7), validates certain marriages registered by the Protector of Indian Immigrants and recorded in the Emigration Lists.

Franchise. Act No. 8 repeals Act 25 of 1894, and disqualifies for the franchise persons who (not being of European origin) are natives or descendants in the male line of natives of countries which have not hitherto possessed elective representative institutions founded on the parliamentary franchise, unless they first obtain an order from the Governor in Council exempting them from the operation of the Act.

Copyright. The Copyright Act, 1896 (No. 9), repeals Ordinance 14 of 1856, and lays down a copyright law for the Colony. The term of copyright in a work published in the author's lifetime is for the life of the author and for five years more, provided that it is not less than thirty years from the first publication. The term of copyright in posthumous works is thirty years from publication. There is to be a register of copyrights, and infringement of copyright involves liability for damages and forfeiture to the proprietor of the copyright. Two printed copies of any book published in the Colony are to be delivered gratis to the Colonial Secretary or his nominee. Any person not being the registered proprietor of the copyright, or some person authorized by him, is not to import into the colony any reprint of any book or copy of any book in which there is registered copyright under the Act, or under any enactments for the time being in force in the Colony relating to copyright. There are no conditions or restrictions as to printing within the Colony.

Deserted wives and children. The Deserted Wives and Children Protection Act, 1896 (No. 10), imposes punishments for wilful neglect to support a family, and enables magistrates to make orders compelling a man to support his wife and family. Provision is made for enforcing within the Colony orders under similar enactments made in other countries of South Africa.

Faction fighting. Act No. 11 enables the courts of magistrates to punish with fine or imprisonment "faction fighting," which is defined as meaning "fighting with or without weapons between natives in which not less than eight persons are engaged," and as including any breach of the peace, riot, assault, injury, or homicide occurring in any such fight.

Employers' liability. The Employers' Liability Act, 1896 (No. 12), seems to be copied from the English Employers' Liability Act, 1880 (43 & 44 Vict. c. 42).

Telegraph. Act No. 17 amends the Telegraphic Messages Copyright Act, 1895

by extending from 50 to 100 hours the period during which the reproduction of telegraphic messages is prohibited.

Stolen cattle.

The Spoor Act, 1896 (No. 21), fixes on the head of a native kraal responsibility for the value and damages of stolen animals, the spoor of which is traced to, or to the neighbourhood of, the kraal, and gives rights of search within the kraal, and right to demand assistance in following up the spoor. "Spoor" is defined as meaning any mark or impression on, or disturbance of the surface of any ground, or any mark or impression on, or disturbance of any grass, herbage, or wood on such ground, or any matter or substance left or found upon such ground, grass, herbage, or wood indicating that any person or persons or any cattle have passed along in any particular direction.

Magistrates.

The Magistrates Act, 1896 (No. 22), is a consolidation Act, which regulates the names, districts, staff, duties, powers, and procedure of magistrates' courts. These courts appear to have both criminal and civil jurisdiction in the classes of cases which in the United Kingdom are disposed of by courts of summary jurisdiction.

Theft of cattle.

Act No. 23 enables a person to be adjudged guilty of having stolen cattle if there is reasonable evidence that the cattle have been stolen, and on a search the carcase, or the head, skin, fleece, flesh, or any other part of any cattle is found in his possession or on his premises, or in, or in the immediate vicinity of, his house, kraal, hut, or place, and he does not satisfy the Court that he came lawfully by the articles found, or that they were there without his knowledge or assent.

Medical practitioners.

The Medical and Pharmacy Act, 1896 (No. 35), establishes a Medical Council and a Pharmacy Board for the Colony, and provides for the licensing and registration of medical practitioners, chemists, and druggists, and lays down regulations as to the sale of poisons and drugs.

The Dentists Act, 1896 (No. 30), places dentists under the Medical Council established by Act No. 35.

Wild Birds.

Act No. 33 prohibits the killing and taking of certain birds specified in the Schedule, or their eggs, except by express permission of the Governor for the purposes of scientific research. The list in the schedule includes the locust-bird, the tick-bird, all varieties of swallows, the wagtail, and the white stork, and may be added to by the Governor in Council.

Touting.

The Labour Tout Regulation Act, 1896 (No. 36), requires labour touts to take out annual licenses, and defines a labour tout as meaning any person who, for the purpose of work or labour beyond the Colony, procures or attempts to procure, ply, seek for, or engage natives in the Colony, or supplies or undertakes to supply natives to be employed or engaged in work or labour beyond the Colony. There is an exception

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in the case of hunters, travellers, and others taking native servants out of the Colony under special permission of the Governor. There are penalties for persons who, whether licensed as touts or not, enter premises without the consent of the owner or occupier for the purpose of procuring or seeking for natives, for persuading servants to desert, and for harbouring deserters.

Native locations.

The Native Locations Act, 1896 (No. 37), enables the Governor in Council to make rules for regulating the use and occupation of lands set apart as native locations.

Intoxicating liquors.

The Liquor Act, 1896 (No. 38), amends and consolidates the laws regulating the sale of intoxicating liquors, and provides for the grant of wholesale licences and of retail licences of different classes. A club licence is required where liquors are supplied to members and to honorary members and guests admitted under the club rules. The licences are granted by a Licensing Board. Each Board consists of three members appointed apparently, for boroughs and townships, by the town council or town board, and for places outside boroughs and townships by the Governor, and holding office for a year. Persons interested in the liquor traffic are disqualified for membership. There are provisions for giving effect to the principle of local option with respect to the grant of licences. No new retail licence is to be issued in any borough or township if a majority of the persons whose names are on the burgess roll or town roll, and who reside or carry on business within the neighbourhood of the premises for which the licence is sought, have lodged with the clerk of the Board, 7 days before the hearing of the application for the licence, a memorial objecting to the grant of the licence.[1] The issue of new licences may be generally prohibited within borough wards, townships, and other areas if there has been a memorial by a majority of the persons, being registered voters and constituting a similar class, objecting to the issue of new licences. The sale of liquor to natives or Indians is prohibited except in special cases. There is an exemption from the provisions of the Act in the case of sales during a Session of Parliament by any person appointed by the President of the Legislative Council or the Speaker of the Legislative Assembly as caterer of the Refreshment Rooms of the Houses of Parliament.

Supreme Court.

The Supreme Court Act, 1896 (No. 39), consolidates the laws relating to the Supreme Court of the Colony. It declares that the law of the colony is to be the system, code, or body of law commonly called the Roman-Dutch law as accepted and administered by the

[1] Compare the legislation of British Columbia (*post*, p. 225), where a petition in favour is required for the grant of a new licence.

leading tribunals of the Cape Colony up to the 27th day of August, 1845, and as modified by the ordinances, laws, and Acts then in force in the Colony of Natal. This system, code, or body of law may be added to or altered by the Legislature. But all matters and disputes in the nature of civil cases between natives living under native laws are to be tried according to the native laws, customs, and usages for the time being so far as they are not of a nature to work some manifest injustice or repugnant to the settled principles and policy of natural equity, except that cases arising out of transactions in trade are to be dealt with according to the principles of Colonial law. NATAL.

VII. WEST AFRICA.

I. THE GAMBIA.

[*Contributed by A. Gray, Esq.*]

Ordinances passed, 7.

Of the ordinances passed in 1896, the last three only demand attention. They deal with questions of Foreign Jurisdiction and Protectorate.[1] As our readers may be aware, large territories beyond Her Majesty's dominions are administered with varying degrees of power by Her Majesty in pursuance of treaties and under the authority of the Foreign Jurisdiction Act, 1890. The mode of exercise of this jurisdiction is, in the first instance, by Order in Council. The Protectorates administered through the Foreign Office, such as those of the East Africa, Central Africa, and Uganda, are legislated for on each occasion by Order in Council and regulations thereunder. Another mode is for convenience' sake adopted by the Colonial Office with regard to protected territories adjacent to West African colonies. In their case the Order in Council under the Foreign Jurisdiction Act delegates all Her Majesty's powers of legislation to the legislature of the adjacent colony. **Protected territories.**

The colonial legislature usually passes special laws for the Protectorate, but sometimes applies the colonial law. Accordingly, the line of demarcation as regards law and administration between what is and what is not British territory tends to become faint.

Ordinance No. 5 is a curious instance of reflex action. The preamble recites that certain territories, popularly known as "The Ceded Mile," were long ago (in 1826, 1832, and 1850) ceded to Great Britain, and proceeds "and whereas it is convenient that the Ceded Mile should

[1] For similar legislation of Sierra Leone, see *post*, p. 212.

GAMBIA.

be brought under the same system of administration as the Protected Territories adjacent to the Colony of the Gambia." The Ordinance then applies the ordinances relating to the Protectorate to this part of the British Dominions, as if it were part of the Protected Territories.

No. 7 effects the same object with respect to an island in the River Gambia known as McCarthy's Island.

Lands. No. 8 deals with the administration of the public lands in the Protectorate, and shows how little of the Sovereignty has not been ceded to the British Crown. "Public Lands" for the purpose of the Ordinance mean (i.) lands not possessed under a valid title at the time when the territory became a Protectorate; (ii.) lands belonging to any conquered or deposed ruler; and (iii.) lands which were formerly vested in the ruler as ruler, and not as his private property.

The Administrator is to have all the same rights with respect to these public lands as he has in the Colony with respect to Crown Lands.

No grant or concession of any public lands is to be valid unless made by the Administrator, and no grant or concession made to any European before the establishment of the Protectorate is to be valid unless approved by the Administrator.

2. GOLD COAST.

[*Contributed by A. Gray, Esq.*]

Ordinances passed, 15.

King Prempeh. The detention and deportation of King Prempeh of Kumassi and his associates[1] are provided for by Ord. Nos. 1 and 2.

Telegraphs. Native chiefs are compulsorily obliged to protect the telegraph service by Ord. No. 6. The Governor may by writing under his hand place any section of a telegraph in the charge of a chief, and require him to report any injury or accident to the line to the Commissioner of the District. If the line is maliciously injured,[2] the Governor, after inquiry, may impose upon the chief, or upon any town or village, a fine to be assessed by the District Commissioner.

Weights and measures. No. 9 is a Weights and Measures Ordinance, which adopts the English standards.

Deportation of prisoners. While the Gold Coast deports its political prisoners to Sierra Leone, the Niger Protectorate passes on its captured enemies to the Gold Coast. The detention of Nana, an ex-chief of Benin, is authorized by Ord. No. 10.[3]

[1] As to their detention in Sierra Leone, see *post*, p. 212.

[2] The lines are occasionally cut by the natives to obtain the wire for ornaments, etc.

[3] The Act for the custody of Napoleon Buonaparte, 56 Geo. 3, c. 22, affords a precedent for similar legislation.

The Compulsory Labour Ordinance, 1895, noticed in last review[1] as having been passed for one year only, seems to have been found satisfactory: its operation is continued to the end of 1897. **Native labour.**

A new edition of the Colonial Statutes is authorized by No. 14. For this purpose the Chief Justice, Mr. William Brandford Griffith (member of the Society of Comparative Legislation), is appointed Commissioner by name. The Ordinance supersedes the Statute Laws Ordinance, 1894, under which Mr. Hutchinson was appointed to do the same work, but which has been ineffectual owing to the promotion of that gentleman. The new law is much wider than its predecessor, and gives powers of correction, amendment, and consolidation similar to those conferred by laws of St. Vincent and British Guiana.[2] **Statute law revision.**

3. SIERRA LEONE.

[*Contributed by A. Gray, Esq.*]

Ordinances passed, 34.

No. 1 declares the terms and conditions applicable to loans authorized to be raised by the Government of the Colony, and provides for the creation of Sierra Leone Inscribed Stock. **Loans.**

The raising of a special force of Coast Defence Volunteers is provided for in No. 4. They may be raised for a period of six months when war is threatened, or for the period of the war. **Coast defence volunteers.**

The Perjury Ordinance (No. 5) enables Courts to punish perjury summarily as a contempt of Court. This provision is similar to that of the Oaths Ordinance of Ceylon, noted at p. 151 above. **Perjury.**

All dogs at Sierra Leone must now be licensed under pain of death; they must also wear badges certifying their registration (Ord. No. 7 of 1896). **Dogs.**

The Ordinance for the suppression of Human Leopards, which we recorded[3] last year (No. 15 of 1895), was repealed by No. 9 of 1896, which makes fuller provisions. Among new sections is one rendering liable to heavy fines any chief who directly or indirectly permits or encourages or is concerned in the celebration in any town or village of any Human Leopard customs. **Human Leopards.**

The office of Queen's advocate is abolished, and is henceforth **Law officers.**

[1] See *Journal*, vol. i. p. 100.

[2] *Ibid.*, p. 132; and *infra*, p. 241.

[3] *Ibid.*, p. 101. The Human Alligators, a society mentioned by Miss Kingsley, "Travels in West Africa," pp. 537, 538, with objects similar to those of the Human Leopards, seem to be also legislated for. See next page.

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represented by an Attorney-General and a Solicitor-General (No. 10 of 1896).

Habeas corpus.

The far-reaching authority of *habeas corpus* is exemplified by No. 12, which permits the detention of Kaba Gainda and six other unruly persons, and in their case suspends the *Habeas Corpus* Act. The preamble recites that they have "endangered the peace of the British sphere of influence by acting in defiance of the authority of the officer administering the government, and, in disobedience of his command, in having planted and occupied with their followers certain lands belonging to the inhabitants of Bunjema, and having repeatedly used threats and offered violence towards the said inhabitants, and on one occasion driving them from their lands with a force of fifty-eight men, armed with guns and swords."

Master and servant.

The terms upon which persons may be engaged within the Colony for service in places beyond the Colony are regulated by Ord. No. 19. The contracts of service must be attested before a magistrate; security must be given in cases where the employer is not resident in the Colony, etc.

Protected territories.

An Ord. (No. 20) with respect to the exercise of jurisdiction in the Protectorate adjacent to Sierra Leone, makes provision for a court of native chiefs and a court of the District Commissioner. To the latter court are reserved cases of murder, cannibalism, and offences relating to secret societies, such as the Human Leopard and Alligator Societies. Part IV. of the Ordinance relating to lands in the protectorate has been disallowed by Her Majesty, and is accordingly repealed by Ord. No. 34.

No. 21 is an instance of legislation similar to those mentioned in the case of the Gambia (see p. 209, above). Certain outlying portions of the Colony are, for purposes of convenience, to be administered as if they were parts of the protectorate.

Savings bank.

By Ord. No. 30 the Treasury Savings Bank is abolished, and a Post Office Savings Bank established in its stead.

King Prempeh.

King Prempeh and other political prisoners from Ashanti have been deported[1] to Sierra Leone, and their detention in this Colony is authorized by Ord. No. 33, which provides that they may be kept in such durance as the Governor may prescribe, that the legality of their detention may not be called into question by writ of *habeas corpus* or other process.

[1] See Gold Coast Ordinances, Nos. 1 & 2 of 1896, referred to at p. 210, above.

4. LAGOS.

[*Contributed by A. Gray, Esq.*]

Ordinances passed, 11.

Railways.

Compared with the elaborate procedure imposed upon railway promoters in this country, the Lagos Railway Construction Ordinance, 1896 (No. 3), is a measure of much simplicity. In eight sections it enables the Government to make a railway wherever it pleases, no termini or lines being mentioned. The Public Land Ordinance, 1876, which is a Lands Clauses Act, is incorporated, and the only requirement is that plans of the lands proposed to be taken are to be prepared and to be open to public inspection. Shortly after this Ordinance was passed it was found to be too simple, and some months later an amending Ordinance (No. 9) followed, but the two laws omit a great many of the provisions which are to be found in our Clauses Acts and railway bills.

Protection of illiterates.

No. 7 is an Ordinance for the protection of illiterates. It provides that when any person writes any letter or other document for or in the name of an illiterate person, he shall also write on the letter or document his own name as the writer, with his address; "and his so doing shall be taken to be equivalent to a statement that he was instructed to write such letter or document by the person for whom it purports to have been written, and that the letter or document fully and correctly represents his instructions, and that prior to its being signed by mark or otherwise, it was read over and explained to the person whose name or signature it bears, and that such mark or signature is the true mark or signature of the person whose mark or signature it purports to be." If any of the implied averments are false, the writer is liable to penalties.

Public inquiries.

The Commissions of Inquiry Ordinance, 1896 (No. 8), makes such provisions as are necessary for inquiries by commissions in the nature of Royal Commissions.

VIII. SOUTH ATLANTIC.

1. FALKLAND ISLANDS.

[*Contributed by Alexander Pulling, Esq.*]

Ordinances passed, 11.

Master and servant. ORDINANCE No. 2 regulates the law as to conspiracy in trade disputes, and as to the mutual rights of masters and servants, and is an almost verbal reproduction of ss. 3 and 5 to 7 of the (Imperial) Conspiracy and Protection of Property Act, 1875 (38 & 39 Vict. c. 86). The Ordinance gives a right of appeal from a conviction by a magistrate to the Supreme Court of the Colony.

Administration. The Unrepresented Estates Ordinance, 1896 (No. 3) (as slightly amended by No. 11), abolishes the grant of letters of administration to creditors, and provides for the appointment of an official administrator by whom all estates, of which there are no representatives, are to be collected and administered. Of the proceeds of such estates a percentage is to be applied for expenses, and the remainder paid into the Colonial Treasury on trust for the beneficiaries of the estate. After a period, unclaimed amounts are appropriated to public purposes.

Customs. The Customs Ordinance, 1896 (No. 5) (as amended by No. 8), consolidates and amends the previous Ordinances relating to customs duties and trades. The Tariff of Import Duties is short and simple and is confined to intoxicating liquors and tobacco, the rates of duty being on the whole slightly lower than the Imperial ones. The duties on liquors are uniform, and do not vary with the strength; thus light and strong wines pay the same rate.

Agriculture. The Fencing Ordinance, 1896 (No. 6), provides for the erection of dividing fences between adjoining sheep-stations at the joint expense of the owners, and imposes a penalty for wilfully leaving gates open.

Intoxicating liquors. Ord. No. 7 provides that retailers of intoxicating liquors are not to keep stores, and prohibits the sale of spirits of less than 27 under proof. Licensed persons in townships are to keep accounts of liquor purchased and sold by them in books open to the inspection of constables. Owners of stations six miles from a township may sell liquor to their shepherd, etc., without a licence.

Cattle disease. Ord. No. 10 amends two Ordinances of 1895, which dealt with scab in sheep.

2. ST. HELENA.[1]

[*Contributed by W. F. Craies, Esq.*]

Ordinances passed, 2.

Ord. No. 1 empowers the Governor in Council to fix the rates of postage on postal packets sent from the Colony and subject thereto applies the Imperial Post Office Acts to the Colony, so far as applicable.[2] **Post office.**

Ord. No. 2 is an appropriation ordinance.

IX. NORTH AMERICAN COLONIES.

1. DOMINION OF CANADA.[3]

[*Contributed by Alexander Pulling, Esq.*]

Acts passed—Session ending April, 1896, 53; Session ending in October, 16.

In connection with the annual Appropriation Act (c. 1) it may be observed that the financial year in the Dominion ends on the 30th of June. **Financial year.**

C. 2 confirms a convention between Great Britain and the United States of the 8th of February, 1896, under which a local commissioner is appointed by each of the high contracting parties to decide certain claims by Great Britain in respect of seizures, etc., of vessels by United States ships, and gives the Commissioners the powers of the Supreme Court of British Columbia and of the Exchequer Court of Canada as to enforcing the attendance of witnesses, etc., and as to punishment for contempt of Court. **Seal fisheries.**

C. 3 varies the provisions of the Act relating to ocean steam-ships **Steamship subsidies.**

[1] Eleven Ordinances were passed in 1895. Nos. 1, 5, 10, relate to appropriations; No. 2 to savings banks; No. 3 to the mode of promulgating and construing ordinances, the law in force in the Colony, and the general rules of procedure; No. 4 to gaols; No. 6 to burial-grounds; No. 7 to deserters from foreign merchant vessels; No. 8 to markets; No. 9 to customs; and No. 11 to imported live stock.

[2] The rates were fixed by proclamation of the 29th of September, 1896.

[3] There were, in 1896, two Sessions of this Legislature, the first ending in April and the second in October. The first fourteen Acts of the former session are Public General Acts, the remainder are local and private Acts; and of the latter session, the first five Acts are Public General Acts and the remainder local. None of the Acts of the latter session call for notice here.

DOMINION OF CANADA.

subsidies (1849, c. 2) as to the subsidizing of contracts which the Governor in Council may enter into.

Workmen's wages.

C. 5 is directed to ensuring that workmen employed on public works shall get their wages notwithstanding defaults in payment by contractors. The Act provides that, if a contractor for public works makes default in payment of wages, money deposited by him as security for executing his contract may be applied in paying the workmen. In future subsidies or loans to Companies or persons for the construction of railways or other works, a condition is to be implied that part of the subsidy may be retained as security for the wages of workmen. All companies hereafter incorporated, or of which the charters are renewed or extended, are made liable for the payment of three months' wages of every foreman, workman, labourer, or team, employed in the construction of any work for the company whether directly, or through the intervention of any contractor or sub-contractor.[1]

Loan companies.

C. 11 provides that debentures of loan companies subject to the legislative authority of the Dominion Parliament may be made payable to order or to bearer or to registered holder or otherwise as the company think fit.

Adulteration.

C. 12 amends the Adulteration Act (R.S.C. c. 107) (which brings together into one Act provisions as to the adulteration of foods and drugs, and of agricultural fertilizers, etc.), and provides that the giving to bees of sugar or of any other substance with an intention that the bees shall use it in making honey shall be deemed an adulteration of honey within the Act.

Diseases of animals.

C. 13 amends the Animals Contagious Diseases Act (R.S.C. c. 69), and defines "animal" in that Act as including cattle and all other animals. The Imperial Act is, with the exception of certain special provisions as to dogs, restricted to ruminating animals and swine.

Supreme Court.

C. 14 amends the Supreme and Exchequer Courts Act (R.S.C. c. 135) as to the constitution of the Court, the title of its Chief Justice, and the number of Judges who form a Court.

Railway.

Of the thirty-nine local and private Acts, no fewer than twenty-eight are Railway Acts. Where such an Act incorporates a new company it contains a section declaring that the undertaking is a work for the general advantage of Canada, and thus brings it within the jurisdiction of the Dominion Parliament.

Friendly societies.

C. 51 amends the Act incorporating the Supreme Court of the

[1] For other legislation as to workmen's wages see South Australia, *ante*, p. 172; Quebec, *post*, p. 218; Ontario, *post*, p. 219; Manitoba, *post*, p. 229.

[2] Compare the (Imperial) Sale of Food and Drugs Act (38 & 39 Vict. c. 63; 42 & 43 Vict. c. 30) and Fertilizers and Feeding Stuffs Act, 1893 (56 & 57 Vict. c. 56).

Independent Order of Foresters. In the United Kingdom similar societies are not regulated by special Acts of Parliament. *DOMINION OF CANADA.*

C. 52 incorporates an association for providing a "National Sanatorium" for the isolation and treatment of persons affected with pulmonary diseases, and gives the trustees somewhat extensive powers of management. **Public health.**

C. 53 is devoted to the regulation of the Canadian Jockey Club, and gives the Club Committee power to make byelaws for internal management, and also for the institution of a stud book of thoroughbreds in Canada and the enforcement of a uniform code of racing rules. The byelaws, when gazetted and when a copy has been mailed to every Company or club which has been affiliated with the parent club, take effect as if they were enacted in the Act. **Jockey Club.**

2. QUEBEC.

[*Contributed by Alexander Pulling, Esq.*]

Acts passed, 97.

CC. 9, 10 relate to the election of members of the Legislative Assembly of the Province. British subjects (males of full age), owners, occupants, or tenants of real property of a value according to the valuation roll of from $200 to $300, annuitants of a certain amount, persons who earn a certain sum from a trade or calling, fishermen with certain property, and also teachers and priests (independently of property qualification) are qualified electors. All judges and magistrates are disqualified. The lists are prepared by the secretary-treasurer of each municipality and corrected by the Municipal Council, subject to an appeal to a judge. At each election the provisions of the revised statutes as to corrupt practices are to be posted up in each voting sub-division. The voting is by ballot, and the Act contains various adaptations of the (Imperial) Ballot Act, 1872. **Parliamentary elections.**

C. 11 provides for the appointment of Commissioners to hold inquiries into any matters connected with the good government of the province or of any locality, and empowers those commissioners to summon witnesses and administer oaths, and provides for expenses. **Public inquiries.**

C. 13 provides that in the case of persons with special professional knowledge, a number of years (not exceeding ten) may be added to their years of service for superannuation purposes.[2] **Pension.**

[1] The Session 59 Vict. ended in December, 1895. There was no session ending in 1896. The first forty-six chapters of the session 59 Vict. would probably be treated in the United Kingdom as public and general.

[2] Compare the (Imperial) Superannuation Acts, 1859, s. 4, and 1827, s. 3.

QUEBEC.

C. 14 amends the Quebec Licence Law in certain minor particulars.

Intoxicating liquors. Company. C. 15 imposes taxes upon certain commercial corporations and companies, including all banks, and insurance and loan companies, and navigation, railway, telegraph, and telephone companies.

Death duties. C. 17 amends the law as to duties on successions[1] in certain minor particulars.

Game. C. 20 establishes a close season for and regulates the killing of deer, moose, beaver, otter, musk-rat, and other animals. No person not domiciled in the province can hunt without a permit. Special permits are granted for obtaining specimens for scientific and breeding purposes during the close season. The Act also provides for the setting apart out of public lands remote from settlements of hunting territories, and for the leasing of such territories.

Roads. C. 22 relates to the organization of "Good Roads Associations," for improving the roads in the province.

Superior Court. C. 24 regulates the number of judges constituting the Superior Court.

Jury. C. 25 amends the laws as to juries in certain minor particulars.

Lottery. C. 26 repeals the laws respecting lotteries and bazaars.

Burial. C. 28 regulates interment, and provides for cases in which bodies may be disinterred with a view to the repair or improvement of churches, cemeteries, etc.

Railway. C. 32 empowers municipalities to exempt from all taxes and imposts whatsoever any railway company having a station within their limits.

Mutual Benefit Associations. C. 34 provides that certain Foreign Mutual Benefit and Aid Associations or Mutual Insurance Companies shall not carry on business in the province without an authorization from the Lieutenant-Governor, and regulates the grant of such an authorization. The Act also limits the sums which a Mutual Benefit Association may pay to its sick members to the amount raised for that purpose less cost of management, and makes the members of the committee of management responsible for any payment made in contravention of this enactment.

Land tenure. C. 38 amends the Act of 58 Vict. c. 45[2] as to the tenure of land in the Magdalen Islands.

Narcotics. C. 40 provides that persons using opium, morphine, or other narcotics may be interdicted and put in confinement.

Workmen's privileges. C. 42 gives the labourer, workman, architect, and builder a right of preference over the vendor and other creditors of immoveable property to the extent of the additional value given to such property by the work they have done. Between themselves they rank in the order in which they are mentioned above.

[1] See *Journal*, vol. i. p. 105.

[2] *Ibid.*, p. 106.

3. ONTARIO.[1]

[*Contributed by T. Raleigh, Esq.*]

Acts passed, 123.

The statutes of the Province of Ontario, passed in 1896, form one hundred and twenty-three chapters, of which the more important may be grouped as follows:—

The 24th of June, 1897, was the four hundredth anniversary of the landing of John Cabot on the shore of Cape Breton. By c. 16 the Lieutenant-Governor is empowered to appoint Commissioners to organize a Historical Exhibition in honour of this event, and a Congress to discuss the principles of government in their application to the British Empire and its various parts.

Provincial government.

By c. 69 the laws relating to the Education Department are consolidated and revised. C. 5 amends the provisions for payment of succession duty on all property situated in Ontario, whether the owner is domiciled there or elsewhere; and c. 12 prescribes the mode of levying Crown duties on timber. C. 17 consolidates the Acts relating to registration of births, etc.

Local government.

The hours during which sheriffs' offices are to be open are fixed by c. 47. The number of members composing a County Council is reduced by c. 52.

Industrial legislation.

An important group of statutes deals with the liens to which mechanics and others are entitled in respect of their wages. By c. 35 the lien attaches upon the interest of the person on whose property the work is done, and the owner may deduct a percentage from his payments to the contractor, and make it a security for the wages due to the labourers. The Woodman's Lien Act of 1881 is extended by c. 36. C. 37 secures payment of wages to men engaged on public works, and empowers the Government to retain money granted by the legislature and apply it to payment of wages. By c. 38 contracting out of the provisions of these and other Acts for the protection of workmen is forbidden. Bakeshops are placed under regulation by c. 64; travelling shows are somewhat stringently dealt with in c. 59; c. 60 consolidates the Acts passed to encourage the planting of trees.

Criminal law.

Debt collectors using forms which imitate the forms of a Division Court are liable to be fined under c. 23. By c. 27 police officers are authorized to take bail.

[1] The Session 59 Vict. ended on April 7, 1896.

ONTARIO.

Civil procedure. C. 18 amends the Judicature Act of 1895;[1] it empowers the High Court to remove an executor or administrator, and confirms the Rules of Practice to be made by the Commissioners appointed in 1895. C. 19 amends the County Courts Act, and c. 20 the Surrogate Courts Act.

Family law. The Marriage Act, c. 39 of these statutes, consolidates in thirty-two sections the previous enactments relating to notice and solemnization of marriage.

Property. C. 42 amends the Landlord and Tenant Act, 1895;[2] it is declared that the relation of landlord and tenant is not hereafter to depend on tenure. C. 68 is entitled an Act to make further provisions for the protection of game. Its chief object is to prevent the extermination of the deer by unlicensed hunting.[3]

4. NOVA SCOTIA.[4]

[*Contributed by L. S. Bristowe, Esq.*]

Acts passed—Public general, 26; local, 56; private, 52; total, 134.

Executive administration. By c. 1, in matters within the jurisdiction of the Nova Scotia legislature, all powers and functions vested prior to the British North America Act in the Governors or Lieutenant-Governors of the several provinces now forming part of the Dominion of Canada (including the power of commuting and remitting sentences) are vested in the Lieutenant-Governor or administrator of Nova Scotia.

Hospitals. C. 2 authorizes payments in certain cases out of the provincial treasury for the support of hospitals established and maintained by a municipal or town council, or by private parties or benevolent organizations, where the hospital is recognized by the town or municipal council as a public hospital, and has been granted by the council the public aid of not less than $300 per annum, and the governing body of the hospital includes a representative appointed by the council. The hospital receiving aid under the Act is subject to inspection, and the Governor in Council has the right to appoint one member of the governing body. The Act does not apply to any hospital in the city of Halifax.

Exhibition. C. 3 provides for an annual Agricultural and Industrial Exhibition to be held in the city of Halifax.

Game. C. 4 amends and consolidates the Acts for the preservation of game.

Loans. C. 5 amends s. 2 of c. 7 of the Acts of 1892, entitled "an Act respecting Temporary Loans."

[1] See *Journal*, vol. i. p. 107. [2] *Ibid.*, p. 108.
[3] *Ibid.*, p. 109. [4] The session 59 Vict. ended on February 15, 1896.

NOVA SCOTIA.

C. 6 provides for the purchase by the Commissioner of Public Works and Mines, on the application of the several municipal councils, of road-making machinery, the sums paid to be a charge on the county road grants. **Road-making machinery.**

C. 7 provides for the annual incomes of the sheriffs of counties being made up to $600 out of the provincial treasury. **Sheriffs' fees.**

C. 8 requires contagious diseases on certain fruit trees to be cut out and burned, and provides for the appointment of inspectors. **Fruit trees.**

Under c. 9 the County Courts may authorize the adoption by any person over twenty-one years of age of any younger person not being his or her wife, husband, brother, sister, uncle, or aunt. The written consent of the child if over fourteen years of age, of her husband if she is a married woman, and (except where the person to be adopted is of full age) of his or her parents or parent (if any), or mother where the child is illegitimate, is required; except where such person is insane, or is in prison for an unexpired term of three years, or has neglected to provide proper care and maintenance for the child for two years, and in certain other cases. As regards the succession to property, the adopted child stands to the adopting parent (but not as regards relationship with other persons) on the same footing as a real child. **Adoption of children.**

Cc. 10 and 11 amend the law relating to public instruction. **Public instruction.**

C. 12 amends c. 8 of the Revised Statutes fifth series "Of the Regulation of Mines." **Mines.**

C. 13 amends the definition of "personal property" in the Towns Incorporation Act of 1895,[1] and makes another small amendment in that Act. **Towns incorporation.**

C. 25 amends the Liquor Licence Act, 1895.[2] **Intoxicating liquors.**

C. 26 makes provision for defraying certain expenses of the civil government. **Expenses.**

Small amendments are made by cc. 14, 15, and 16, in the Municipal Assessment Act of 1895; by c. 17 in the Judicature Act, 1884; by c. 18 in c. 100 of the Revised Statutes fifth series "Of the Probate Court and Procedure therein"; by c. 20 in the law relating to the settlement and support of the poor; and by c. 21 in c. 1 of the Revised Statutes "Of the Promulgation of Statutes." **Minor amendments.**

The Act of 1894 relative to the collection of debts is also amended (c. 22), and the Factors Act (c. 23), and the Act of 1895 relative to the sittings of the Supreme Court of Pictou (c. 24).

[1] This Act consolidated the law on the subject.

[2] See *Journal*, vol. i. p. 110.

5. BRITISH COLUMBIA.[1]

[*Contributed by Alexander Pulling, Esq.*]

Acts passed, 63.

Animal. The Animals Act, 1896 (c. 1), relates to mischievous animals. Swine are not allowed to run at large at any time of the year, nor stallions or bulls of a certain age during certain periods; animals so running at large may be impounded and the cost of their food, etc., recovered from the owners. Dogs worrying "domestic animals" (which includes poultry) may be killed. Under the Wild Horses Act, 1896 (c. 49), licensed persons may (east of the Cascade Range) shoot unbranded cattle or stallions running at large. By the Cattle Act Amendment Act, 1896 (c. 7), persons shipping, dealing in, or slaughtering cattle must furnish particulars to the Government agents, &c.

Society. The Benevolent Societies Act Amendment Act, 1896 (c. 2), provides for the change of name of societies incorporated under the principal Act of 1891, which it amends.

Mines. The Bureau of Mines Act Amendment Act, 1896 (c. 5), amends the Act of 1895 (c. 3),[2] as to the examination of Assayers.

Sale of goods. The Conditional Sales of Goods and Chattels Amendment Act, 1896 (c. 9), amends the Act of 1892, as to the cases in which conditional sales of goods are avoided.

Co-operative societies. The Co-operative Associations Act, 1896 (c. 10), provides for the formation and government of co-operative societies with limited liability, and confers certain privileges as to the nomination of a transferee of shares in case of death. Persons above the age of sixteen may be members.

County Court. The County Courts Act Amendment Act, 1896 (c. 2), amends the previous Acts as to the attachment of debts, and abolishes the existing practice as to appeals, and makes new provisions.

Legal practitioners. The Inferior Courts Practitioners Act Amendment Act, 1896 (c. 12), provides that persons on the provincial voters list for an electoral district may appear as attornies and advocates in any County Court, or Court of a Stipendiary Magistrate or Justice of the Peace within that district, notwithstanding they are not legal practitioners.

[1] The Session 59 Vict. closed on the 17th of April, 1896. The first forty-nine Acts are mostly public, though a few of them relate to private companies; the remainder are local and private Acts.

[2] See *Journal*, vol. i. p. 111.

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The Small Debts Act Amendment Act, 1896 (c. 13), provides for the payment of magistrates by salaries instead of fees. **Small debts.**

The Supreme Court Amendment Act, 1896 (c. 14), provides for service of notice on the Minister of Justice and the Attorney-General of British Columbia in the case of causes in which the validity of any Act of the Dominion or Province is called in question. The Act also provides for the appointment of an Accountant to the Supreme Court and for the dealing with money paid into Court, and validates the Code of Supreme Court Rules which was passed in 1890. **Supreme Court.**

The Coroners Act Amendment Act, 1896 (c. 15), provides for the appointment of Deputy Coroners. **Coroner.**

The Creditors' Trust Deeds Amendment Act, 1896 (c. 16), amends the Act of 1894, as to the proofs of claimants. **Insolvency.**

The Creameries Act, 1896 (c. 17), provides for government loans to Creamery Associations conducted upon the "Co-operative System," which is defined as including associations in which the members who are producers are entitled to a share in the profits in proportion to the butter-fat in the milk supplied by them, after payment of a fixed interest on the capital stock. **Agriculture.**

The Distress for Rent Amendment Act, 1896 (c. 18), amends the Act of 1895 (c. 17), which cut down the landlords right to distrain to three months rent. **Distress.**

The Drainage, Dyking, and Irrigation Act Amendment Act, 1896 (c. 19), provides for the enforcement of claims against the commissioners of any dyking district by the levying in accordance with the precept of the Sheriff of a special rate called the "execution rate," which is levied with the other drainage rate. **Drainage of land.**

The Fire Insurance Policy Amendment Act, 1896 (c. 20), amends the Acts of 1893 and 1895, as to "proof" by mortgagees of lands and otherwise. **Insurance.**

The Bush Fire Act, 1896 (c. 21), empowers the Lieutenant-Governor by Order in Council to constitute any portion of the Province a fire district. Within a fire district, fires can only be started, and land can only be cleared by fire between the 1st of May and the 1st of October, subject to certain restrictions, and all locomotives on railways must be fitted with spark arrestors[1] of a prescribed type. The duty of seeing that a locomotive is properly fitted with appliances is imposed upon the engine-driver. **Fire protection.**

By the Game Protection Amendment Act, 1896 (c. 22), the Act of 1895[2] is amended in various respects. Indians and settlers may kill **Game, and wild birds.**

[1] There is Swedish legislation similar to this.

[2] See *Journal*, vol. i. p. 113.

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game for their own food free from the restrictions of the Acts. Deer may not be decapitated before being put on sale.

Execution. The Homestead Act Amendment Act, 1896 (c. 23), exempts personal property of the value of five hundred dollars from seizure.

Intestates. The Intestate Estate Amendment Act, 1896 (c. 26), empowers a Judge of the Supreme Court to authorize an official administrator or the personal representative of an intestate to act as legal representative to realty, and thus effects an object similar to that of Part I. of the (Imperial) Land Transfer Act, 1897 (60 & 61 Vict. c. 65).

Investment of loan society. The Investment of Loan Societies Amendment Act, 1896 (c. 27), amends the law as to the powers of such societies by foreclosure. It also provides that no funds of the society may be lent to a director either with or without security, and that any director receiving any such loan shall forfeit to the society a sum of ten times the amount of the advance.

Crown lands. The Land Act Amendment Act, 1896 (c. 28), deals with two principal subjects, viz.: (1) The Crown royalty on timber, and (2) The enforcement of the same and the sale of Crown Land. Unsurveyed lands are divided for these purposes into three classes: 1st class, agricultural lands; 2nd class, lands which require artificial irrigation before being suitable for agricultural purposes; and 3rd, waste, mountainous, and rocky tracts. Timber lands which contain a prescribed amount of feet of milling timber are not to be open for sale. All Crown grants in future are to contain a provision that if any of the lands so conveyed are divided into town lands, every fourth lot shall be reconveyed to the Crown. The Act also provides that the privileges of free miners shall not extend to the Naval or Military reserves.

Valuation. C. 30 is an Act of a local character, but is of interest as consisting of provisions enacted for obtaining a new valuation list in a case where the records and papers belonging to a municipality were destroyed by a fire.

Finance. The Sinking Fund Adjustment Act, 1896 (c. 33), provides for the suspension or reduction of the annual payment to the sinking fund.

Mines.[1] The Mineral Act, 1896, repeals and consolidates the Acts relating to all minerals *except coal*, and sweeps away the preceding legislation except that as to placer mines. No person without a free miner's certificate is allowed to mine. The Act deals with the privileges of such free miners, lays down rules which in the absence of written articles govern mining partnerships (which may be constituted with limited liability), and provides for the appointment of mining recorders, who have to keep certain books, in which all free miners' certificates and

[1] As to the special tax on ore, see p. 226, below.

all dealings with mineral properties are registered. The Act also confers a "Special Mining Jurisdiction" on County Courts. The Placer Mining Act Amendment Act, 1896 (c. 35), amends the Act of 1891, which relates to mines for precious stones or minerals only. The next Act (c. 36) repeals the Quartz Mine Acts, which were the only other mining legislation on the Provincial Statute book. *BRITISH COLUMBIA.*

The whole provincial law as to the incorporation and election of boards of municipalities has been consolidated and recast in three Acts (cc. 39, 38, 37). Municipalities are of two classes, viz.: (1) City municipalities governed by a mayor and aldermen, and (2) township or district municipalities governed by a reeve and councillors. The area of a city municipality is restricted to two thousand acres, and must be more thickly populated than the district municipality, which is unrestricted in area. Express provision is made for the extension or diminution of the municipal limits. The electors consist of owners, occupiers, householders, or licensed traders who have paid their taxes, independently of sex; but no Chinese, Japanese, or Indians can vote. The qualification for municipal office is that of a qualified elector with the addition of a local property qualification. Women and religious ministers are disqualified. The powers of the Councils are exercised by bye-laws and extend to 157 different series of matters, including most of those comprised in the English Town Improvement and Town Police Clauses Acts, and such matters as the licencing and regulation of plumbers, the destruction of weeds and insects, and the licencing of hotels and saloons. It is the duty of every city municipality to make suitable provision for its poor and destitute—apparently this is the whole poor law of the Province. The audit of municipal accounts is, as a rule, voluntary on the part of the Council, but the Council can, by resolution, or the inhabitants can, by a vote, bring into force certain compulsory audit clauses under which the municipal accounts are audited by Government auditors appointed by the Lieutenant-Governor in Council. A provision is made for statute labour of two days a year on roads, but this is commutable for a fixed money payment. A large number of trades, ranging from the liquor trade to opium dealers, bankers, lawyers, and lastly astrologers, cannot be carried on without a licence from, and an annual payment to, the Council. These licence duties, like the English local taxation licenses, go to swell the revenues of the local authority. The licensing of intoxicating liquor provisions are of interest. A fresh liquor licence cannot be granted unless supported by a petition of

Municipalities.

(Poor.)

(Municipal sales.)

(Intoxicating liquors.[1])

[1] Compare the Natal legislation, *ante*, p. 208, and that of South Australia, *ante*, p. 172.

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two-thirds of the neighbouring householders and *also of* two-thirds of their wives.

Notary. The Notaries Appointment Amendment Act, 1896 (c. 40), prescribes the fees payable on the appointment of a public notary.

Replevin. The Replevin Act Amendment Act, 1896 (c. 41), prescribes how the sheriff is to act if property to be replevied is concealed in an house.

Education. The Public-School Act Amendment Act, 1896 (c. 42), amends the Public-School Act, 1891, as to the powers and qualification of trustees, and provides that in certain cases Boards of school trustees may be incorporated so as to allow the High Schools to become affiliated with Universities.

Sheriff. The Sheriffs' Act Amendment Act, 1896 (c. 43), amends the law as to the Sheriffs' costs in interpleader.

Death duties. The Succession Duty Amendment Act, 1896 (c. 44), prescribes that the property devolving on certain relations (including sons and daughters in law and excluding certain blood relations elsewhere privileged) shall only be charged succession duty at half-rates. The Act also gives the Minister of Finance the power of commuting duty in respect of future interests.

Taxes. The Assessment Act Amendment Act, 1896 (c. 46), imposes the assessed taxes which consist of a tax on the capital value of realty and personalty (varying from 3 per cent. in the case of wild land to $\frac{3}{4}$ per cent. in the case of personalty), and a graduated income tax of $1\frac{1}{4}$ per cent. upwards on incomes of over $1000. If the taxes are paid by the end of the fiscal year, a deduction of from 12 to 33 per cent. is allowed. Mines are not included in "real or personal property," but a special tax is levied on ore.

Trustee. The Trustees and Executors Amendment Act, 1896 (c. 48), provides that property held by a sole trustee or mortgagee shall on his death (notwithstanding any testamentary disposition) devolve on his personal representative, and is a verbal reproduction of section 30 (1) (3) of the (Imperial) Conveyancing Act, 1881 (44 & 45 Vict. c. 41).

6. NEW BRUNSWICK.

[*Contributed by H. Stuart Moore, Esq.*]

Acts passed, 109.[1]

Bridges. C. 3 empowers the creation of an issue of 4 per cent. debenture stock of $400,000 to defray the cost of bridges of a permanent

[1] The Session 59 Vict. ended in March, 1896. The first forty-four Chapters of this session are public Acts, the following forty-one are local in character, and the remainder are private Acts.

character which the Chief Commissioner may deem necessary to construct within the Province; the stock to be paid off by setting apart a sum out of the appropriation for roads and bridges for a sinking fund. C. 2 specially provides out of the public monies supplies for the repair of roads and bridges.

Agriculture. C. 4 gives aid towards providing cold storage for agricultural and other products in suitable localities throughout the Province.

C. 38 exempts all butter and cheese factories from assessment for all manner of rates and taxes, save rates and taxes for school purposes.

Intoxicating liquors. C. 5 consolidates and amends the law respecting the sale of intoxicating liquors. No liquor can be sold without a licence from the Licensing Commissioners for the city, town, or county for which the licence is required, and no liquor may be sold on any boat navigating the inland waters of the Province.

Provincial boundary and divisions. C. 8 defines the boundary between New Brunswick and Nova Scotia, and divides the Province into fifteen counties, and the counties into parishes. Each county has a shire or county town.

Legislative library. C. 11 empowers the Speaker of the Legislative Assembly to insure the Legislative Library against loss or damage by fire.

Legislative assembly. C. 19 appoints the Chairman of the Committee of Supply as deputy Speaker to act in absence of the Speaker.

Highways. C. 21 amends the Highway Acts and enables the Road Tax payer to work on the road instead of paying the tax. Every male between the ages of 21 and 60 is taxed at 1 dollar 50 cents, and real and personal property is taxed according to a scale. The work on the roads is reckoned at 50 cents for every eight hours.

Game. C. 25 provides a close time for musk-rat, and forbids the killing of beaver and otter absolutely for a period of three years.

Mines. C. 27 empowers the Surveyor-General to purchase machinery for boring for minerals, and to lend the same to suitable persons upon terms.

Debtors. C. 28 consolidates and amends the Acts relating to the arrest, imprisonment, and examination of debtors.

Dogs. C. 32 imposes a tax on dogs, and permits the killing of any dog pursuing or worrying sheep, or giving tongue and terrifying sheep on any farm, or straying on any sheep farm between sunset and sunrise. The owner or keeper of a dog receiving notice of injury done by the dog to any sheep shall kill the dog within forty-eight hours.

Death duties. C. 42 amends the Succession Duties Act. In case of devolution of property to certain near relations when the aggregate value is over $50,000, the duty is to be 1¼ per cent. up to $50,000, 2½ per cent. over $50,000 and under $200,000, and 5 per cent. over that amount.

NEW BRUNSWICK.

10 per cent. is charged when over $5000 are left to strangers, and double duty when going to a person who resides out of the Province. Estates under $5000 are not affected by this enactment.

Municipal corporations. C. 44 provides for the incorporation and municipal management of towns. Fifty inhabitants can call for the incorporation of a town. The town is to be governed by a mayor and aldermen, who are to form the Town Council, and are to rule the town by bye-laws. A police-magistrate is appointed by the Lieutenant-Governor. Street nuisances, such as throwing snowballs, sliding, gaming, swearing, etc., are punished by fines. Each town is entitled to be represented by three councillors in the county council for the county in which the town is situate.

7. MANITOBA.[1]

[*Contributed by H. Stuart Moore, Esq.*]

Acts passed, 39.

County Courts. C. 3 amends the County Courts Act, and allows appeals to a judge of the Queen's Bench when the value of the goods or the amount in dispute is above $20 but does not exceed $50, and to the Court *in Banc* when the sum in dispute is over that amount. When it is a question of law or a mixed question of law and fact, application may be made for leave to appeal, however small the sum in dispute may be.

Dairies. C. 5 amends the Dairy Factories Incorporation Act by giving the association power to sell and mortgage lands, and to carry on litigation.

Distress. C. 6 prevents a landlord from distraining for rent on the goods of any person except the tenant or any person liable for the rent. It does not apply to crops in favour of a person claiming by virtue of an execution against the tenant, or to property claimed by a relative of the tenant who lives in the premises as a member of the tenant's family.

Game. C. 7 forbids the hunting and killing of deer, moose, and other specified animals for a period of two years commencing on the 15th of October, 1896.

Horse breeding. C. 8 enables the purchaser of a registered stallion to obtain a new certificate of registration under the Horse Breeders' Lien Act for the purpose of the Provincial Stud Book.

Intoxicating liquors. C. 12 amends the Liquor Licence Act as to the procedure to be followed when transferring a hotel, restaurant or wholesale licence.

[1] The Session 59 Vict. ended in April, 1896. The first thirty-two chapters are public Acts, the remainder are private Acts.

MANITOBA.

C. 14 gives a workman's lien for wages priority over all instruments registered against the lands affected by the lien after the commencement of the work for which the lien is claimed. The lien also has priority over garnishee and stop orders, unless they were incurred for material and labour in connection with the work for which the lien is claimed. **Workmen's wages.**[1]

C. 22 provides for the appointment and remuneration of the provincial Bacteriologist. **Public health.**

C. 24 enables a purchaser of lands sold for taxes to become registered as owner under the Real Property Act. **Land registration.**

C. 25 codifies the law relating to the sale of goods, and practically re-enacts the Imperial Sale of Goods Act, 1893. **Sale of goods.**

C. 27 provides that where any portion of the estate of a deceased person is brought into the Province, it shall be liable to death duty unless it has already been taxed in an amount equal to the duty enforced in this Province. **Death duties**

8. PRINCE EDWARD'S ISLAND.[2]

[*Contributed by H. Stuart Moore, Esq.*]

Acts passed, 24.

C. 4 empowers the grant of $150 per annum for each student attending the Halifax Institution for the deaf and dumb who fulfils certain requirements set out in this Act. **Education.**

C. 5 enables a married woman to hold property and to contract as a *femme sole.* Without a protection order from the Court she is not entitled to her earnings during coverture. A married woman, as well as her husband, is liable for the maintenance of her children. **Married women.**

C. 6 defines the circumstances under which conditional sales of manufactured goods are to be valid. **Sale of goods.**

C. 7 amends the law relating to partition suits in chancery. The Court has power to order a sale of the property instead of partition. **Partition.**

[1] For legislation of other colonies, see *ante*, p. 216.

[2] The Session 59 Vict. ended in April, 1896. Of the Acts of this session 11 would probably be treated in the United Kingdom as public and general.

9. NEWFOUNDLAND.[1]

[*Contributed by L. S. Bristowe, Esq.*]

Acts passed, 19.

Customs. C. 1 continues 58 & 59 Vict. c. 14 to the 1st of July, 1897, but adds to the table of exemptions mining and smelting and agricultural machinery when imported by persons for their own use and not for sale, and also oil-cake, cottonseed-cake, and other preparations for cattle food. The table of duties is also altered in one or two particulars, and the import of goods wholly or partly prison-made is prohibited.[2]

(Prison-made goods.)

Conversion of debentures. C. 2 empowers the Governor in Council to issue new debentures of £20 or a multiple of £20 each carrying interest at four per cent. per annum, or stock bearing the like interest and repayable at par on the 31st of December, 1936, both charged upon the funds and revenues of the Colony, in substitution for debentures issued under any of the Acts mentioned in the schedule.

Roads. C. 3 contains a money grant for the construction and repair of roads and other public works.

Crown lands. C. 4 amends ss. 62 and 64 of the Crown Lands Act, 1884, and makes certain provisions as to expenditure on surface and subterranean mining and for the publication of notice of the forfeiture of leases in the *Royal Gazette*, and one other newspaper published in the colony.

C. 5 amends the same Act and the amending Act (48 Vict. c. 3) by abolishing the royalty on timber.

Education. C. 7 amends the Education Act, 1895,[3] as regards the annual appropriations to be made for various purposes connected with the Act, and in other matters of detail.

Game. C. 8 makes provisions for the preservation of deer. It prohibits the hunting of moose or elk from the 1st of January, 1896, to the 1st of January, 1906. It also appoints a close time for caribou, and prohibits non-residents from hunting without a licence.

Medical profession. C. 9. This Act amends the Newfoundland Medical Act, 1893. It makes provisions for the duration of office of the Medical Board, the filling of vacancies, and the despatch of business, and enlarges their powers as regards the registration of medical men, inquiry into complaints, discipline, and in other respects. Penalties are imposed on

[1] The Session 60 Vict. ended in August, 1896.

[2] Compare the (Imperial) Foreign Prison-made Goods Act, 1897 (60 & 61 Vict. c. 63).

[3] As to this consolidating Act, see *Journal*, vol. i. p. 119.

practising without being registered, and on falsely pretending to be a physician or to be registered; and an unregistered person is incapacitated from recovering any charge for medical services. *NEWFOUNDLAND.*

C. 10. This Act is called the Conveyancing Act, 1896, and substantially enacts the provisions of the (Imperial) Conveyancing and Law of Property Acts, 1881 and 1882, as to implying general words and covenants for title, and as to implying powers of sale, etc., in mortgages, and as to actions respecting mortgages, and as to powers of attorney, and in some other respects. The Act also provides a series of short forms of covenants in leases. **Conveyancing.**

C. 11 amends ss. 24 and 25 of the Registration of Deeds Act (51 Vict. c. 22). **Registration of deeds.**

C. 12 amends the Temperance Act of 1889. **Temperance.**

C. 13 makes certain provisions with regard to the making out of Grand and Petty Jury lists and the service of jurors. **Juries.**

C. 14 provides for the raising of $948,953·67 by advertisement or tender either in the Colony or the United Kingdom, and (if deemed advisable) by issuing debentures or stock carrying interest at 4 per cent. for redeeming certain debentures of the Colony issued under the Acts specified in the schedule, and bearing interest at $4\frac{1}{4}$, $4\frac{1}{2}$, and 5 per cent. **Colonial debt.**

C. 15 enables the guarantee of a company to be accepted for the performance of duties in the public service and by the Supreme Court, provided that the company satisfies certain conditions. **Guarantees.**

Regulations respecting the lobster industry, the herring and cod fisheries, and trout and salmon, made by the Fisheries Board, are printed at the end of the Statute Book. **Fisheries.**

10. NORTH-WEST TERRITORIES.

[*Contributed by Alexander Pulling, Esq.*]

No Ordinances calling for notice in this review were passed by the legislative body of these Territories during 1896. Under an Act of the Dominion, passed in June, 1897 (60 & 61 Vict. c. 28),[1] which came into force on October 1st, 1897, the Territories (which embrace an area of fifty times the size of England) take rank on a provincial standing, and possess, subject to certain limitations, the privileges of responsible self-government, though they do not at present enter into the full dignity of rights equal to those of the other provinces of the Dominion. The history of the Territories from the days of the Hudson's Bay Company [2]

[1] This Act amends the previous Acts respecting the territories, viz. R. S. C., c. 50; 1888, c. 19; 1891, c. 22; and 1894, c. 17.

[2] See the Order in Council of the 23rd of June, 1870 (printed in "Statutory Rules and Orders Revised," vol. i. p. 495), by which Rupert's Land and the North-West

NORTH-WEST TER-RITORIES.

through the stage of their career in which they practically constituted a Crown Colony, of which all Crown rights were held by the Dominion Government, to the present time, is given in an article in the *Times* of October 11, 1897. "In the successive stages through which the Government of these Territories has passed since they became a part of the Dominion, we are enabled to see Provinces in the making, and the lesson for a constitutionally disposed and independent people is in the highest degree instructive and interesting. It shows how simply and almost inevitably the exercise of liberty is attained when the principle of self-government has been cordially accepted as a basis of union."

X. WEST INDIES.

1. THE BAHAMAS.[1]

[*Contributed by Wallwyn P. B. Shepheard, Esq.*]

Acts passed, 27.

Fires.

THE Inquest of Fires Act, 1896[2] (59 Vict. c. 6), provides that, as soon as possible after the occurrence of a fire, an inquiry by public officials appointed for that purpose shall be made into the cause and origin

Inquests.

and all circumstances connected with the fire. The report, with the evidence taken, is to be forwarded to the Colonial Secretary for the information of the Governor. All expenses are to be paid out of the Public Treasury.

Marriage.

The Marriage Law Amendment Act, 1896 (59 Vict. c. 10), extends the limits of time for all marriages (except marriages by special license) from 6 o'clock a.m. to 8 o'clock p.m.[3]

Coroner.

The Investigation of Deaths Act, 1896 (59 Vict. c. 12), requires every person who becomes aware of a death calling for investigation to notify it to the coroner of the district in which the death occurred or to the nearest police-station, and imposes penalties for neglect in so doing. Supposed deaths, the body not being found, may be inquired into, and, whenever required by the Attorney-General, must

Territory were admitted into the Dominion, and to which the deed of surrender by the Hudson's Bay Company is scheduled.

[1] The Session 59 Vict. ended on the 30th of April, 1896.

[2] Compare the City of London Fire Inquests Act.

[3] The hours in England are now from 8 a.m. to 3 p.m. (49 Vict. c. 14).

be inquired into by the coroner, and a report by him is to be forwarded for the information of the Governor.

Common.

The Commoners Act, 1896 (59 Vict. c. 14), after defining the term "lands held in common" to mean and include any lands which had been granted to more than twenty people, and not partitioned, provides for the formation of a Register of Commoners by the Resident Justice of the district for each town in which any land is held in common. Every person in actual occupation of any portion of the land so held in common at the passing of the Act is entitled to be registered as a commoner in the land. Applications for registration as a commoner are to be adjudicated upon by the Resident Justice. Powers are given to the Commoners to hold meetings for the purpose of managing and making regulations as to matters relating to the common lands. All persons occupying lands held in common, and not registered as Commoners, are made wilful trespassers, and may be ejected by warrant of the Resident Justice.

Supreme Court.

The Supreme Court Act, 1896 (59 Vict. c. 26), contains seventy-one sections and two schedules. It is a Judicature Act for the Colony. All existing Courts in the Colony are united and consolidated into "The Supreme Court of the Bahama Islands." The Supreme Court is to consist of a Chief Justice appointed by the Governor, acting upon instructions from one of Her Majesty's Principal Secretaries of State. Any counsel called to the Bahamas Bar, and of not less than ten years' standing, and in actual practice at that Bar, or any member of the English, Scotch, or Irish Bar, of not less than ten years' standing, is qualified to be appointed Chief Justice. Provisions are made as to the appointment of a Registrar and other officials forming the staff of the Supreme Court. Powers are given to the Supreme Court for the admission and enrolment of counsel and attornies, and for the examination of articled clerks. Persons not enrolled cannot recover their professional charges.

The Court is made a Superior Court of Record, and has transferred to it the jurisdiction of six pre-existing Colonial Courts (s. 32), and is given the powers of the High Court of Justice in England, so far as applicable to the Colony, as to all matters not within the jurisdiction of the merged Colonial Courts; and all powers exercisable by the judges of the merged Courts, and, so far as applicable to the Colony, those of the Lord Chancellor of Great Britain and the Lord Chief Justice of England. It is made (s. 33) a Court of Admiralty within the Imperial Act of 1890 (53 & 54 Vict. c. 27), and given jurisdiction in lunacy (s. 34). In civil matters the provisions of the English Judicature Acts are applied as to the concurrent administration of law and equity, the

THE BAHAMAS.

admission of counter claims and third party procedure, and the prevalence of the rules of equity where they conflict with the common law.

Probate of wills or letters of administration by Courts in the United Kingdom, or in any part of Her Majesty's dominions, or in the United States, may be sealed by the Court upon production and deposit of a copy, and thereupon have like operation in the Colony as if granted by the Court. The Court can before sealing require securities for payment of Court fees and the debts due from the estate to creditors in the Colony.

The judge presiding at the trial of any information is enabled to reserve points of law arising on the trial for further consideration by the Supreme Court, and appeals from Magistrates' Courts in New Providence are to be determined by the Supreme Court. Summary jurisdiction with appropriate procedure is conferred on the Court in civil causes where the amount in dispute, or recoverable, or (if rent) in arrear, is over ten pounds (the limit of a small cause) and does not exceed fifty pounds.

A right of appeal to the Privy Council is given without leave where the judgment involves £500 and upwards, and where under £500 by leave of the Court.

Power is given to the Chief Justice to frame general rules and orders for regulating procedure in civil and criminal matters, and such rules come into operation on being approved by the Governor and Executive Council.

Magistrates. The Magistrates Act, 1896 (59 Vic. c. 27), consolidates all the laws relating to magistrates, their jurisdiction, privileges, and powers, and is a complete code of magisterial law and procedure for the Colony. After an extensive interpretation clause, Part I. defines the powers, duties, and privileges of magistrates. Part II. contains provisions as to all preliminary proceedings, as to the issue of summonses or warrants, and arrests with or without warrants, and search warrants. Part III. relates to preliminary inquiries on charges, whether triable summarily or not. Part IV. relates to the Summary Jurisdiction (Criminal). Part V. relates to the Summary Jurisdiction (Matrimonial). Part VI. relates to the Civil Jurisdiction. Part VII. relates to appeals which lie from the decision of any magistrate given in the exercise of his Summary Jurisdiction, whether criminal, matrimonial, or civil, where the case has been heard in New Providence to the Supreme Court, and where in an out-island to the Circuit Justice. Part VIII. relates to witnesses. Part IX. to recognizances and securities. Part X. to distress. Part XI. contains various miscellaneous provisions and powers.

There are four schedules. Schedule 1 contains the list of indictable offences which can be dealt with summarily under the Act.[1] Schedule 2 contains the Rules of Court in civil proceedings. Schedule 3 deals with court fees, and Schedule 4 enumerates the enactments repealed.

2. BARBADOS.[2]

[*Contributed by Wallwyn P. B. Shepheard, Esq.*]

Acts passed, 51.[3]

Law officers. Act No. 3 (the Chief Judge and Crown Law Officers Amendment Act) enacts that the Attorney-General shall be paid a salary of £1000 per annum, and shall not be entitled to any fee for conducting criminal prosecutions, or engage in private practice, and shall in all legal proceedings by or against any public institution give his legal services gratuitously.

Trade marks. Act No. 7 amends the Merchandise Marks Act of 1889 by establishing a register of trade marks at the Colonial Secretary's office, to be called "the Register of Barbados Trade Marks," and by defining the requirements and conditions upon which trade marks may be entered on the register, and subsequently assigned and transmitted.

Telephones. Act No. 8 (the Highways Amendment Act, 1896) enables the Highway Commissioners to grant a revocable permission to any person or company to erect poles at the side of the highways for telephone wires.

Customs. Act No. 12 (the Customs Tariff Amendment Act, 1896) increases the customs duties in the Customs Tariff Act, 1895, by one-fifth (20 per cent.).

Firearms. Act No. 17 (the Firearms Act, 1896) prohibits the carriage of firearms by any person without a licence. Persons in the naval or military service of the Crown or in the police when carrying arms in the performance of their duties are exempted.

Police magistrates. Act No. 18 (the Police Magistrates Act, 1896) amends the Police Magistrates Act, 1891, by enacting that a police magistrate shall not be a coroner or member of any vestry, or parochial, sanitary, or highway board. Within three days after committal of any person for trial the magistrate is to transmit to the Attorney-General the information,

[1] Cf. The Summary Jurisdiction Act, 1879 (42 & 43 Vict. c. 49).

[2] The Session 59 Vict. ended on the 31st of December, 1896.

[3] Of these twelve or more are local or private in their character.

BARBADOS.

depositions of witnesses, statement of accused, documentary exhibits and recognizances, and copies of such documents to the clerk of the crown for the use of the Chief Justice. Power is given to the magistrate to sentence boys under sixteen and above seven years of age, upon conviction of any offence punishable upon summary conviction, to be privately whipped.

Civil service. Act No. 19 (the Retrenchment Act, 1896) abolishes various offices when next vacant, and reduces the salaries of the future holders of certain other offices.

Post office. Act No. 20 (the Post-Office Amendment Act, 1896) amends the Post-Office Act, 1891, by reducing the penalty on non-compliance with the regulations in the principal Act as to the postage of newspapers, and by varying the scale of compensation for damages to postal parcels.

Cruelty to animals. Act No. 21 (the Cruelty to Animals Amendment Act, 1896) amends the Cruelty to Animals Act, 1876, by giving powers to the police magistrates to summon a qualified veterinary surgeon to give evidence, and upon such evidence to order the animal to be destroyed subject to a right of appeal by the owner against the order. Power is also given to any constable to arrest any offender without warrant.

Sale of land by Provost Marshal. Act 22. The Provost Marshal's Amendment Act, 1896, amends the Provost Marshal's Act, 1891, by providing that where any lands have remained unsold for one year in the provost marshal's office they are to be set up for sale by auction without reserve. For two months prior to the sale the provost marshal must, by advertisement in the official gazette, call upon all persons interested to bring in their claims. The conveyance of the provost marshal upon the sale passes all the interest by the conveyances expressed to be conveyed free from all estate liens and incumbrances whatsoever of all persons including the Crown, except such as are specified in the conveyance, and subject to which the lands are expressed to be conveyed. The sale also discharges the lands from dower, the widow's rights being protected by charge on the purchase money.

Education. Act 23. The Education Amendment Act, 1896, amends the Education Act, 1890, in respect of the schemes framed by the education board for the establishment of second grade schools.

Escheat. Act 24. The Escheat Amendment Act, 1896,[1] amends the Escheat Act, 1891, by abolishing the office of escheator general, and vesting his powers and functions in the chief justice, who is to hold a court twice in each year to adjudicate on inquests of escheat.

Police. Act 29. The Police Amendment Act, 1896, amends the Police Act,

[1] Cf. the Escheat (Procedure) Act, 1887 (50 & 51 Vict. c. 53); s. 3.

1890, and authorizes the sale of goods, the owner whereof is unknown, coming into possession of the police and remaining unclaimed for three months.[1] Persons finding such goods and delivering them to the police are to be rewarded. Owners may reclaim them before the expiration of the three months on payment of all expenses incurred. The Governor in executive committee is empowered to issue rules regulating traffic, and these rules are to be published in the official gazette and have the force of law. Life pensions are granted on retirement after ten years' service, or from injury on duty, at the rate of not exceeding one sixtieth of the pay for each year's service, or a gross sum at a rate not exceeding one month's pay for each year of service. Constables are to be discharged on certificates of the medical officer of their station. Leave of absence through ill health and on certificate of the medical officer is allowed on half-pay for any period not exceeding six months, with power to enrol a substitute. A reward fund for meritorious service is to be formed out of the fines and deductions from the pay of the members of the force. *BARBADOS.*

Act 30. The Larceny, Offences against Persons and Grand Sessions Amendment Act, 1896, amends the criminal law and procedure of the Colony. It empowers the Attorney-General, where he thinks a case should have been dealt with summarily, to remit it to the committing magistrate with instructions to that effect (ss. 2, 3). **Criminal law.**

It restricts the right of peremptory challenge to twenty persons even when several persons are to be tried together, and provides for apportionment of the challenge among the accused.[2]

S. 6 amends the law of the Colony as to offences against girls[3] by raising from twelve to thirteen the age below which carnal intercourse with a girl is felony,[4] and from thirteen to fourteen[5] the age under which it is a misdemeanour. Corresponding changes are made with respect to permitting the defilement of young girls on any premises.[6] The Court is empowered to sentence an offender to whipping in the case of certain offences against girls under ten.

Act 31. The Quarantine Act, 1896, constitutes the General Board of Health, the Quarantine Authority, and defines "infectious disease" as cholera, yellow fever, or smallpox, and "infected place" to be any port or place so declared by the Governor pursuant to the Act. The Act contains eighty-nine sections dealing with authorities and powers, **Quarantine.**

[1] Cf. the (Imperial) Police (Property) Act, 1897 (60 & 61 Vict. c. 30).

[2] See 6 Geo. 4, c. 50, s. 29, Archbold Criminal Cases, 170 (21st ed.).

[3] Contained in the Offences against the Person Act, 1868 (a transcript of the Imperial Act, 24 & 25 Vict. c. 100), which was revised and recast in "Barbados Revised Statutes," vol. i. p. 195.

[4] 48 & 49 Vict. c. 69, s. 4. [5] *Ibid.*, s. 5. [6] *Ibid.*, s. 6.

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treatment of vessels on arrival, and regulations during and for release from quarantine.

Married woman's property.

Act 32. The Married Woman's Act, 1896, which amends the Married Woman's Act of 1891, is in substance a transcript of the Imperial Act of 1893 (56 & 57 Vict. c. 63).[1]

Public health.

Act 33. The Public Health Amendment Act, 1896, enables the commissioners of health for the several parishes in the island to acquire land for drainage, the supply of water from the Waterworks Department, and other sanitary purposes. It regulates the manner of acquisition of land for the purposes of the Act, and vests the acquired land for each parish in the parochial treasurer of the parish and his successors as trustee for the parish.

Revising officer.

Act 36. The Representation of the People Amendment Act, 1896, enacts that either a barrister or solicitor with four years' practice in the local courts shall be appointed revising officer.

Solicitors' costs.

Act 40. The Solicitors (Taxation of Costs) Act, 1896, enables a client to obtain a summary order for delivery of his solicitor's bill of costs, together with all the client's documents and papers, with costs against the solicitor if he neglects to deliver his bill for an unreasonable time. No action for costs may be commenced until the expiration of one month after delivery of the bill.[2] Within this month the client may obtain a summary order for taxation, and pending taxation the solicitor is restrained from bringing any action. Further provisions as to taxation are made, and parties interested may have bills of costs against their trustees, either before or after payment, referred for taxation.

Employers' liability.[3]

Act 41. The Employers' Liability Act, 1896, is in substance a transcript of the Imperial Act of 1880 (43 & 44 Vict. c. 42).

Ecclesiastical law.

Act 44. The Anglican Church (Barbados) Act, 1896, provides modes for making appointments of rectors and curates by vesting powers of appointment in certain designated persons, who are to be convened in public for that purpose.

Pauper immigrants.

Act 47. The Immigration of Paupers Amendment Act, 1896, exempts from the previous legislation destitute persons rescued from any ship, and landed direct therefrom, and foreign seamen or stowaways on the undertaking of their country's consul to maintain them until reshipped; and gives power of arrest on application of captain of the vessel which the seaman may have deserted.[3]

[1] Similar legislation was passed for six colonies in 1895. See *Journal*, vol. i. See also Victoria, *ante*, p. 168; Grenada, *post*, p. 253. Compare Prince Edward's Island legislation, p. 229.

[2] 6 & 7 Vict. c. 73, s. 37.

[3] For similar legislation in other colonies, see British Guiana, *post*, p. 241; Grenada, *post*, p. 252.

3. BERMUDA.[1]

[*Contributed by Reginald Gray, Esq.*]

Acts passed, 28.

No. 5 made important changes in the law relating to jurors and juries. **Jury.** The age limit is defined at from twenty-one to seventy. The qualification is real estate or personal estate, or real and personal estate of the value for special jurors of £200, for common jurors of £60. Persons over sixty may claim exemption on that ground, and any person convicted of treason, felony, forgery, perjury, or any infamous crime is disqualified. For each Session of the Court three special jurors and three common jurors are drawn for each parish, all of whom attend the Criminal Session, but only the special jurors attend the Civil Session, receiving for that service a higher rate of pay. In criminal cases the jury consists of twelve, a majority of not less than three-fourths of whom may, except in capital cases, find a verdict after not less than three hours' deliberation. In case of the death or illness of one juror the trial proceeds with eleven. The Court in felonies not capital may permit the jury to separate on the adjournment from one day to another, on the taking of an oath not to communicate with other persons whilst separated. The number of peremptory challenges in felonies not capital is limited to nine, and in capital case to fifteen. The grand jury is retained and the number fixed at seventeen. It is made a misdemeanour to corruptly influence or attempt to influence a juror on any trial, or for a juror to be so influenced.

No. 6 transferred the jurisdiction of the Governor, as Ordinary, in **Probate court.** contentious matters, to the Court of General Assize constituting the Court of Probate.

No. 11 conferred short titles on about eighty Acts. **Short titles.**

No. 19 enacts that in any prosecution for an offence against any of **Evidence.** the sixty-four Acts enumerated in the Schedule, or any Act thereafter passed in amendment thereof, or any regulation or bye-law made or to be made by lawful authority under any such Act, the defendant and the wife, or husband, of such defendant, as the case may be, may, if the defendant think fit, be called as a witness, and if called shall be sworn and examined, and may be cross-examined and re-examined in like manner as any other witness. In any such prosecution the presiding Judge or Justice of the Peace is required at the conclusion of the case

[1] The Session 59 Vict. ended in December, 1896. Of the twenty-eight Acts passed three were local and one private. To the Acts of 1895 reviewed in the *Journal*, vol. i. p. 125, should be added No. 20, which made important changes in the Acts regulating registration for election purposes.

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for the prosecution to inform the defendant of his privilege under the Act. The Acts included in the Schedule are chiefly those under which the defendant is liable on conviction on summary prosecution to a pecuniary penalty, with or without the alternative of imprisonment, but some of the Acts refer to indictable offences.

Oaths. No. 20. The Oaths Act, 1896, follows the (Imperial) Oaths Act, 1888 (51 & 52 Vict. c. 46), in substance.

Ecclesiastical law. No. 23. The Clergy Act, 1896, provides for the gradual reduction and final discontinuance of the grants from the public treasury in aid of religion, with special provision for those of the existing incumbents of the livings of the Church of England who were originally appointed by the Crown, the appointments since 1882 having been made by the Synod under Legislative authority.

Voluntary conveyance. No. 24. The Voluntary Conveyances Act, 1896, adopts the provisions of the (Imperial) Voluntary Conveyances Act, 1893 (56 & 57 Vict. c. 21), with a proviso to the effect that a voluntary conveyance to obtain the benefit of the Act must, if made before the passing of the Act, be registered in the Colonial Secretary's office within six months after the passing of the Act, and, if made after passing the Act, within six months after the execution thereof.

Agriculture and horticulture. No. 25 provides for the establishment and maintenance of a public garden to assist in developing the agricultural and horticultural capabilities of Bermuda.

Education. No. 26 makes provision for the superannuation of school teachers employed under the supervision of the Board of Education.

4. BRITISH GUIANA.[1]

[*Contributed by Wallwyn P. B. Shepheard, Esq.*]

Ordinances passed, 22.

Customs duties. No. 2. The Customs Duties Ordinance, 1896, subjects imports of certain scheduled goods to specific duties in respect of some and to *ad valorem* duties in respect of other classes of goods, and provides for drawbacks.

Taxes. No. 3. The Tax Ordinance, 1896, imposes an acreage tax on each acre of land under cane cultivation on plantations of over 50 acres of 1 dollar 35 cents, and on land not under cane cultivation of 2 cents, and applies the tax of 1 dollar 35 cents to the diminution of the amounts payable by employers of indentured immigrants to the Immigration

[1] The Session 59 Vict. ended the 31st of December, 1896.

BRITISH GUIANA.

Fund. Tonnage dues are levied on vessels entering any port of the Colony of 25 cents per ton on vessels of seventy tons and upwards, and of 5 cents on vessels under seventy tons (not to be collected more than 4 times in one year). All government vessels, pleasure yachts, Royal and other mail steamers, and vessels calling and not unloading, are exempt. Duties on rum and other spirits, to be consumed in the Colony, and various stamp and licence duties are imposed. The Ordinance remains in force until the 31st of March, 1897.

Pauper immigrants.

No. 4. The Destitute and Criminal Immigrants Regulation Ordinance, 1896, restricts the landing, except by permission of the Governor, of destitute immigrants until an undertaking has been given by some resident person approved by the Receiver-General undertaking to repay any pauper charges incurred on behalf of the destitute immigrant within one year. Power is also given to the Governor by proclamation to prohibit the landing of vicious or criminal immigrants.

Uniforms.

No. 5. The Uniforms Ordinance, 1896, adopts the (Imperial) Uniforms Act, 1894, 57 & 58 Vict. c. 45.

Elections.

No. 9. The British Guiana Constitution Ordinance, 1891, Amendment Ordinance, 1896, regulates the revision by the Revising Barrister of the Register of Voters, and enacts that the election of members of the Court of Policy and of Financial Representatives shall be by ballot. It also regulates the conduct of elections by the returning officers, and imposes penalties for personation and corrupt practices, and for violation by officers' clerks and agents, and others, of the secrecy of the ballot.

Statute law revision.

No. 12. The Statute Laws Revision Ordinance (No. 1), 1896, amends various Ordinances, and provides that in all Ordinances which require the Attorney-General's fiat to the commencement of prosecutions any document bearing the fiat shall be receivable as *primâ facie* evidence without proof of signature. The Ordinance also amends the Statute Laws (Revised Edition) Ordinance, 1894, as follows:—

(1) The new edition shall be the sole and only proper Statute Book of the Colony with regard to the ordinances included therein.

(2) Any ordinance of date before the new edition, but not inserted therein, may be in any Court referred to for the purpose of construing contracts, etc.; or ordinances contained in the new edition; or, if not repealed or incorporated in any ordinance contained in the new edition, for the purpose of showing what the law is. Provided that, in the event of any inconsistency between any ordinance contained in the new edition and an ordinance not so contained, the latter shall be deemed repealed.

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(3) The validity of the resolutions and orders of the Governor and Court of Policy, etc., made pursuant to enactments repealed during and for the purpose of the preparation of such revised edition, are saved so far as such resolutions, etc., are not inconsistent with any Statute Law of the Colony for the time being.

Mines. No. 15. The Mining Ordinance, 1896, constitutes a mining partnership between two or more persons who own a claim for the purpose of working it, and engage or employ persons in working it, whether there be a written contract of partnership or not. An express agreement to become partners is not necessary for the existence of a mining partnership. Any claim owned by partners in mining is to be partnership property. Each member of the partnership shares profits and losses in the proportion in which his shares bear to the whole number of shares; and has a lien on the partnership property for the debts due to the creditors of the partnership, and for money advanced by him for its use. Every shareowner has power of viewing and inspecting the workings. Partners may assign their interest without dissolving the partnership, and without the consent of the other partners, but the interest must, on sale, be first offered to the other partners, and by them refused. No partner has power to bind the partnership except by express authority, in writing, from members thereof. The decision of the members owning a majority of the shares binds the partnership in the conduct of business. The Ordinance also contains provisions for dissolution of the partnership and procedure under the mining regulations of the Colony.

Ecclesiastical law. No. 18. The Clergy List Ordinance, 1896, charges the public revenue with grants for the maintenance of the ministers of the Christian religion in the Colony, and regulates payment of salaries, and also certain lay parochial duties of the ministers.

Sugar cultivation.[1] No. 20. The Agricultural Aids Ordinance, 1896, facilitates the raising of money by owners of sugar plantations. The Ordinance defines "owner" so as to include guardians, executors, and administrators, legally charged with the cultivation of any land. A loan by any person to an owner of land for management, cultivation, and up-keep, together with interest, is, when recorded by the colonial registrar, to become a charge in preference to all charges other than those of the Crown, the Colony, and the Immigration Fund, on the crops of the then current year; and any part of the loan not repaid out of the proceeds

[1] By Act 1440 of Victoria (see *ante*, p. 170), encouragement was given to the sugar-beet industry. As to the sugar industry in the West Indies, see Report of the West India Royal Commission presented to Parliament (C. 8655), 1897.

of the crops, is to become a lien on the land, ranking next after all then existing liens thereon. Interest is not to exceed six per cent. per annum. Lenders are entitled whilst unpaid to oppose any transfer or mortgage of the land whereon any crop has been pledged to them. Loans are to rank as between themselves in the order of their dates of record. Lenders are not required to see to the due application of their loans. Duly constituted attorneys of owners may exercise all powers under the ordinance. Powers are reserved to mortgagees and creditors of the borrower to oppose the advance.

Power to view the crops is given to lenders. Crops charged are to be realized when reaped in manner provided by the agreement between the borrower and lender, with liability on the borrower to furnish detailed account of all sales, and pay the lenders out of the proceeds in accordance with their respective priorities of the claims. Any breach of this provision by a borrower involves conviction for misdemeanour and imprisonment. Lenders to whom sale is committed are likewise liable to account to other lenders and to the owner, and for due application of the proceeds. The Supreme Court, on petition filed by the lender, may, if satisfied that the borrower is not cultivating the land, make an order for the lender to enter and cultivate. An owner receiving a loan must keep an account in the books of the land on which the crop is growing of the amount of the loan and the application thereof. Borrowers misapplying the money lent are made liable to conviction for felony. The lien on the growing crops takes precedence of sums owing to sequestrators, or other claims on crops in respect of which the advance was made; and if the land is sold before the crops are reaped, the lien on the crop becomes a preferential lien on the proceeds of sale of the land, ranking next after debts to the Crown, the Colony, and the Immigration Fund.

5. BRITISH HONDURAS.[1]

[*Contributed by H. L. Ormsby, Esq.*]

Ordinances passed, 6.

Export duties. Ordinance No. 1, 1896, imposes an export duty of 50 cents per ton on logwood.

Evidence. Ordinance No. 2, 1896, provides for the payment of witnesses when the District Commissioner dismisses a criminal charge, and also in case of coroners' inquests.

[1] The session ended February 7, 1896.

6. JAMAICA.[1]

[*Contributed by A. Gray, Esq.*]

Laws passed, 39.

Criminal lunatic. Law 5 makes the same provision for the return of a special verdict in cases where the jury find that the accused committed a crime but was insane at the time, as was made in England by The Trial of Lunatics Act, 1883 (46 & 47 Vict. c. 38).

Whipping. By Law 8 provision is made for the whipping of boys between 10 and 16, who are convicted of offences punishable with penal servitude or imprisonment without the option of a fine. The whipping sentence is in lieu of imprisonment; the number of strokes is not to exceed 36. The Jamaica equivalent of a birch rod is, we learn, an instrument composed of tamarind switches.

Cruelty to children. The English Consolidation Act of 1894 for the prevention of cruelty to children (57 & 58 Vict. c. 41) is followed in Law 9.

Lepers. The law relating to leper hospitals is amended or re-enacted by Law 15. It contains provisions for entrance to and discharge from the asylums, and for preventing lepers from being at large.[2]

Lunatic. The Lunatic Asylums Law (No. 16) makes further provision for the detention of lunatics.

Merchant shipping. The Marine Board Law (No. 17) gives to the Marine Board the functions of Pilotage and Harbour Boards, the superintendence of light-houses and beacons, and the powers of the Board of Trade in England with respect to investigation of accidents, dealing with certificates, etc.

Medical profession. Law 21 amends the law with respect to certificates of qualification of medical practitioners.

Coolie marriages. The Indian Immigrants Marriage, Divorce, and Succession Law (No. 22) shows that legal difficulties may arise from the loose marriage ties of Indian coolies, who emigrate to countries where their own laws and customs do not prevail. The Protector of Immigrants is directed to find which of the immigrants stand in the relation of husband and wife to each other. When he has thus paired them, he registers them, and they are "deemed to be married." If coolies want to marry in Jamaica, the male must be 15 and the female must be 13 years of age. Protection is given to husband and wife in respect of separate property. It would seem that no action for breach of promise lies, but if the intending bridegroom has given presents according to custom, he can recover them by action. Parties married or "deemed to be married"

[1] The session ended July 1, 1896.

[2] For legislation elsewhere as to lepers, see p. 246.

can for the sum of £2 obtain a divorce from a resident magistrate, who "may deal with the application in a summary way and make an order dissolving the marriage." The ground of divorce is stated to be "misconduct entitling the applicant to a divorce," but what kinds of misconduct are sufficient does not appear. *JAMAICA.*

The Trustee Law, 1896 (No. 24), enacts for the colony the provisions of the Trustee Act, 1893 (56 & 57 Vict. c. 53). **Trustee.**

Law 28 repeals the Spirit Licence Laws of 1875 and 1877, the provisions of which are re-enacted with amendments. **Spirits.**

Law 36 makes fresh provisions with respect to the examination of persons for admission as solicitors, and for the supervision of the profession by a committee largely composed of solicitors. This committee has the same functions of inquiry and report as the Incorporated Law Society has in this country. **Legal profession.**

Law 39 deals with the calling of persons to the Bar of Jamaica, and for the passage of men from the bar to the profession of solicitor. Persons called to the "Bar of Jamaica" rank after "barristers-at-law," *i.e.* those called to the Bar in England.

A Produce Protection Law (No. 37) requires every dealer in any of the articles mentioned in a schedule (coffee, cacao, ginger, pimento, bananas in bulk and other fruits, etc.) to take out a licence. The licensed dealer is obliged to keep a record of the persons from whom he purchases any agricultural produce of the kinds scheduled. Dyewoods are not to be purchased in quantities of less than 500 lbs., and they must be accompanied by certificates during transit. **Produce protection.**

By Law 38 (the Prædial Larceny Law) the unlawful severing of growing things is constituted larceny. **Larceny.**

7. LEEWARD ISLANDS.[1]

[*Contributed by H. L. Ormsby, Esq.*]

(1) CENTRAL LEGISLATURE.

Acts passed, 15.

No. 1 of 1896 (the Interpretation of Laws Act, 1896) is similar to the (Imperial) Interpretation Act (52 & 53 Vict. c. 63). Similar laws were passed the same session for Antigua (No. 6) and for St. Christopher and Nevis (No. 18). **Interpretation.**

No. 4 of 1896 (the British Probates Act, 1896) enacts that British Probates and letters of administration and confirmation may be sealed in the Colony, and gives power to make rules of Court in that behalf. **Administration.**

No. 13 of 1896 directs that an account of personal estate is to

[1] The session ended December 31, 1896.

LEEWARD ISLANDS.

accompany the declaration of a person applying for probate or administration.

Plants protection.

No. 9 of 1896 (the Plants Protection Act, 1896) prohibits the import of coffee plants and uncured berries from certain places, and gives power to the governor to add other places to this list, and also power to prohibit the import of any plants, etc., from any place named in a proclamation in that behalf. A penalty for contravention is imposed which is not to exceed £20, and power is given to seize prohibited imports.

(2) ANTIGUA.[1]

Acts passed, 20.

Customs.

No. 1 of 1896 (the Customs Tariff Act, 1896) fixes and regulates customs duties. Duties are imposed on aerated waters, alcoholic liquors, animals, bricks and tiles, cement, coal, etc., drugs, firearms and ammunition, grain, matches, oilmeal, etc., perfumery, provisions, tallow and oil, tobacco, wood, etc.

No. 2 of 1896 adds 10 per cent. to these duties for the use of the presidency.

No. 20 of 1896 explains No. 1 of 1896.

Interpretation.

No. 6 of 1896 (the Interpretation of Laws Act, 1896) is the same as the Act of the Central Legislature of the Leeward Islands with a few necessary variations.

Lepers.

No. 8 of 1896 (the Lepers Act, 1896) provides for the establishment of asylums for lepers; for the compulsory segregation of lepers offering food for sale or selling in any shop; for the voluntary segregation of indigent lepers, and for the removal to leper asylums of leprous prisoners and lunatics.

Lepers escaping from an asylum are liable to imprisonment with hard labour up to one month for a first offence, and up to three months for a subsequent one.

Power is given to the Governor in Council to make rules as to leprous lunatics and prisoners, and for leper asylums.

Visiting justices are to be appointed.

Trespass on a leper asylum is punished by a fine up to £5, or imprisonment not exceeding one month.

Employing a leper in connection with food or to sell in a shop is punished by a fine up to £25, or imprisonment with hard labour up to three months.

Shipmasters bringing foreign lepers to the Presidency are liable to a fine of £10 for each leper.

[1] The session ended December 30, 1896.

Foreign lepers arriving may be detained and returned to the ship in which they came. *LEEWARD ISLANDS.*

No. 9 of 1896 (the Militia Act, 1896) gives power to the Governor to call out the cavalry or militia as often as he shall think fit, provides for payments in that behalf, and gives rule-making powers to the Governor. **Militia.**

No. 10 of 1896 (the Dogs Act, 1896[1]) imposes a licence duty of 5*s.* in St. John, and 3*s.* 6*d.* in the rural districts on keeping of dogs. Collars to be worn by the dogs are to be provided with the licence. Dangerous and unlicensed stray dogs may be destroyed, as may rabid dogs. Owners of dangerous dogs may be ordered to keep them under proper control. **Dogs.**

(3) DOMINICA.[2]

Acts passed, 7.

No. 1 of 1896 (the Tariff Act, 1896) fixes and regulates customs duties.[3] **Customs.**

No. 4 of 1896 repeals the Poor Law Acts.

No. 5 of 1896, the Export Duty Act, 1896, imposes export duties on sugar and other products of the Presidency. **Export duties.**

(4) MONTSERRAT.[4]

Ordinances passed, 10.

No. of 1896 (the Customs Tariff Ordinance,[5] 1896) fixes and regulates customs duties. **Customs.**

No. 2 of 1896 increases these duties.

No. 6 of 1896 (the Board of Health, 1896) constitutes a Board of Health, and gives the board powers as to sanitation, regulation of streets and buildings, lighting of streets, regulation of drainage, waterworks, hospital, poor-house, poor relief,[6] and control of the public burial-ground. **Public health and poor.**

No. 7 of 1896 (the Liquor Licence Ordinance, 1896) regulates the issue of liquor licences. If a licence is refused by a magistrate an appeal lies to a judge of the Supreme Court; no appeal apparently lies from the granting of a licence. **Intoxicating liquors.**

S. 31 imposes a penalty on the use of uncovered lights while drawing off rum.

[1] Cf. (Imperial) Dogs Act (34 & 35 Vict. c. 56).
[2] The session ended November 24, 1896.
[3] This tariff differs slightly from that of Antigua.
[4] The session ended November 11, 1896.
[5] This tariff agrees with that of Antigua.
[6] By Ordinance 23 of 1868 maintenance of poor is a colonial charge not to exceed £650 per annum. Outdoor relief may be given in case of emergency.

LEEWARD ISLANDS.

S. 34 imposes Sunday-closing, and makes the closing hours 7 p.m. on ordinary days and 8 p.m. on Saturday. The remaining provisions are similar to the law of England.

Tobacco. No. 8 of 1896 regulates the trade in tobacco.

(5) ST. CHRISTOPHER AND NEVIS.[1]

Ordinances passed, 21.

Customs. No. 1 of 1896 (the Customs Tariff Ordinance, 1896) fixes and regulates customs duties.[2]

No. 5 of 1896 (the Additional Customs Tariff Ordinance, 1896) increases these duties.

Arms. No. 7 of 1896 (the Arms and Ammunition Ordinance, 1896, and No. 10 of 1896, the Arms and Ammunition Ordinance, 1896, Amendment Ordinance, 1896) gives power to restrict or prohibit the import of arms and ammunition. Dealing in arms is made subject to licence, the duty on which is £5. Licensed dealers are to keep certain books.

A licence (duty 3*s.* 6*d.*) is necessary for the carrying of arms. On the refusal of such a licence the owner of arms is to give them up, and is to be paid the value thereof by the Treasury.

Powers of search for arms and ammunition are also conferred on the Governor in Council.

Volunteers. No. 8 of 1896 (the Volunteer Ordinance, 1896) establishes and regulates a volunteer corps of mounted and dismounted infantry; certain military offences are made punishable by fines ranging from £5 for insubordination on duty to 1*s.* for talking in the ranks. In England the fines of this character are imposed by the rules of each corps and not directly by statute.

Intoxicating liquors. No. 11 of 1896 (the Liquor Licence Ordinance, 1896) fixes the duties on licences for the sale of intoxicating liquors.

Interpretation. No. 18 of 1896 (the Interpretation of Laws Ordinance, 1896) is the same as the Act of the Leeward Islands, with a few necessary variations.

(6) VIRGIN ISLANDS.[3]

Ordinance passed, 3.

Customs. No. 2 of 1896 (the Tariff Ordinance, 1896[4]) fixes and regulates customs duties.

[1] The session ended November 16, 1896.

[2] This tariff agrees with that of Antigua.

[3] The session ended June 22, 1896.

[4] This tariff agrees with that of Antigua (see p. 246, above), but omits duties on bricks, and tiles, and perfumery, while it adds a duty of 10 per cent. on beef and pork preserved in cans.

8. TRINIDAD AND TOBAGO.[1]

[*Contributed by Wallwyn P. B. Shepheard, Esq.*]

Ordinances passed, 34.

Land acquisition.

No. 5. The Land Acquisition Ordinance, 1896, enables the Governor by agreement or compulsory purchase to acquire the land necessary for public works for which the Legislative Council has appropriated money. The soil of all land so acquired is vested in the Crown. The Governor may abandon any land entered upon before an award for compensation has been made, subject to the owner's right of compensation for damages through the abandonment. Abandoned land revests in the owner. Purchase money of land is to be paid to owners or persons enabled to sell and convey the land by the Receiver-General on the warrant of the Governor. There are various provisions in respect of land acquired from owners under disability for the ascertainment and payment of compensation money. Payment into Court finally bars all estates and interests, and from the date of such payment the acquired land becomes absolutely vested in the Crown in trust for public purposes.

Public health.

No. 9. The Yaws Ordinance, 1896, enables the Governor, with the approval of the Legislative Council, to establish special hospitals and take specific measures to prevent the spreading of the disease called "Yaws,"[2] and to provide for the treatment of persons suffering therefrom.

Post-office.

No. 11. The Post-Office Ordinance, 1896, empowers the Postmaster-General to detain letters suspected to contain dutiable goods, and forward same to the Customs for examination.

Legal profession.

No. 14. The Solicitors' Ordinance, 1896, provides that (subject to certain provisions), no person shall be admitted as a solicitor who has not passed the preliminary examination in general knowledge, prescribed for articled clerks by the judges of the Supreme Court of the Colony, and the Principals of the Royal College and St. Mary's College, and the final Examination of the Incorporated Law Society in England. The Registrar of the Supreme Court of the Colony is to prepare a list of all persons thus entitled to practice as solicitors and conveyancers in the Colony, and such list, when submitted to and approved by the judges, becomes the "Solicitors' Rolls." Solicitors or writers to the

[1] The Session 59 Vict. ended in December, 1896.

[2] An epidemic and contagious disease (*Frambœsia*) to which the African races are specially subject, consisting of an eruption of tubercles which develops into a fungoid growth.

TRINIDAD AND TOBAGO.

signet in the United Kingdom are, after six months' residence in the Colony, entitled, on the direction of the Court, to have their names inscribed on the Solicitors' Rolls. The Registrar shall also keep a register to be called the Articled Clerks' Book, and enter therein the names of all persons who have passed the preliminary examination or taken degrees at the Universities, or been called to the Bar, or passed the other qualifying examinations of the College of Preceptors.

Every person whose name is on the Articled Clerks' Book shall be entitled to enter into articles of clerkship with any practising solicitor. Various other provisions affecting articled clerks and solicitors are contained in this Ordinance.

Squatters. No. 16. The Ordinance for the removal of persons from Crown lands in the island of Tobago enables summary process to be taken for the ejectment from Crown lands of persons without any probable claim or pretence of title, and delivery up of the same to the Warden of the Crown lands in the Colony.

Criminal law. No. 17. The Criminal Offences Amendment Ordinance, 1896, enacts that felonious injury outside the Colony upon a person dying in the Colony,[1] or in the Colony upon a person dying outside the Colony, shall be dealt with as if such offence had been wholly committed in the Colony.[2] The procurement of abortion is made a felony, and concealment of the birth of a child by secret disposition of the dead body is made a misdemeanor.[3]

Public health. No. 19. The Hospitals Ordinance, 1896, empowers the police to arrest any person suffering from leprosy or any contagious or infectious disease, and wandering about without any visible means of support, and take such person before a Stipendiary Justice of the Peace, who may order such person to be detained in the hospital authorized by the Governor for such cases until cured.

Criminal procedure. No. 20. The Criminal Procedure Ordinance, 1896, empowers any Magistrate on information of an offence, whether within or without the Colony, by a subject of Her Majesty over and in respect of which offence the Supreme Court has jurisdiction, to institute preliminary proceedings and issue his warrant for the arrest of the person suspected of such offence.

Savings banks. No. 21. The Savings Bank Amendment Ordinance, 1896, authorizes the investment of infants' money lodged in the Colonial Treasury to the credit of the infant in the Government Savings Bank. It enables infants over seven years of age to deposit and withdraw moneys in their own names, and makes certain provisions as to the moneys of deceased depositors.

[1] Cf. 24 & 25 Vict. c. 100, s. 10. [2] *Ibid.*, ss. 58, 59. [3] *Ibid.*, s. 60.

TRINIDAD AND TOBAGO.

No. 24. This Ordinance empowers the Governor, on receipt of an address from the Legislative Council, founded on a petition signed by not less than one-third of the total number of burgesses on the burgess-roll of the Borough, to revoke or amend any charter granted under the Municipal Corporations Ordinance. **Municipal corporations.**

No. 25. The Railways Ordinance, 1896, enables the Governor, with the consent of the Legislative Council, to establish and maintain railways for passengers and goods, which railways shall be vested in the Crown. Provisions are made for the regulation of such railways in their working (which need not be by locomotive engines), and as to revenue and other details. The Ordinance consolidates and repeals seven prior Ordinances. **Railway.**

No. 26. The Compensation for Injuries Ordinance, 1896, is in substance a transcript of Lord Campbell's Act (9 & 10 Vict. c. 93) and of the Employers' Liability Act, 1880 (43 & 44 Vict. c. 42). The definition of "workman" is somewhat wider than in the Imperial Act, by expressly including drivers and conductors of tram-cars, and the action must be brought within *twelve*, and not within six, months of the accident. **Compensation for personal injuries.**

The Building Societies Ordinance, 1896 (No. 28), is a transcript of the bulk of the Imperial Building Societies Act, 1894 (57 & 58 Vict. c. 47), and amends the Building Societies Ordinance, 1890, No. 40, which in its turn was an adaptation of the Imperial Acts of 1874, 1877, and 1884 (37 & 38 Vict. c. 42). **Building societies.**

The Summary Conviction Offences Procedure Ordinance, 1895 (No. 47), was not included in the review of legislation for 1895, as it did not receive the Governor's assent till the 13th of February, 1896. It is of 167 Sections, and repeals seven prior Ordinances, and consolidates, with amendments, the whole of the law of the Colony as to the proceedings for offences punishable on summary conviction and indictable offences summarily triable. In the main, it follows the Summary Jurisdiction Act, but gives larger powers as to search warrants (s. 30), and transcribes the Probation of First Offenders Act, 1887, and the Justices' Protection Act, 1848. **Summary criminal jurisdiction.**

No. 30 of 1896 amends the Ordinance of 1895 by substituting a fresh table of offences for which adults may, with their own consent, be summarily tried. The chief difference from the English law[1] is that larceny up to £50 can be tried summarily if the accused consents.

[1] 42 & 43 Vict. c. 49, Sch.

9. WINDWARD ISLANDS.

[*Contributed by H. L. Ormsby, Esq.*]

(1) GRENADA.[1]

Ordinances passed, 37.

Intoxicating liquors.

No. 2 of 1896 (the Liquor Licence Ordinance, 1896), s. 7, exempts the Grand Etang House. S. 9 provides for six classes of liquor licences :—

(i.) Wholesale licences, half-yearly, £8;
(ii.) Bottle licences, half-yearly, £24;
(iii.) Retail town licences, half-yearly, £32 to £40;
(iv.) Retail country licences, half-yearly, £16;
(v.) Malt and wine licences, half-yearly, £5;
(vi.) Steamer licences, half-yearly, £3.

Occasional licences may be granted—10*s.* per diem.

In classes (iii.) and (iv.) a certificate of character from the District Magistrate is necessary (s. 19). No spirits may be sold under 25 per cent. under proof (s. 21).

S. 22 provides for hours of closing, Saturday (and day before Christmas Day) from 9 p.m. till 6 a.m. on morning of Monday (or day after Christmas Day); other days, 8 p.m. till 6 a.m.

Pauper and criminal immigrants.

No. 3 of 1896 (the Infirm Paupers and Immigrants Regulation Ordinance, 1896) and No. 10 of 1896 (the Infirm Paupers and Immigrants Regulation Amendment Ordinance, 1896) restrict the landing of infirm paupers, and imposes a penalty of £100, secured by maritime lien, on vessels landing them, and a penalty of £50 on the master.

S. 9 restricts the immigration of alien criminals.

S. 13 gives power to the Governor, by proclamation, to prohibit the immigration of any criminal or vicious class of immigrants.

Ss. 14–16 apply the penalties on vessels and master for landing infirm paupers to the care of immigrants proclaimed under s. 13.

Medical officers.

No. 4 of 1896 (the Medical Ordinance, 1896) provides for the employment, remuneration, and duties, of public medical officers, and for the constitution of medical districts.

Interpretation.

No. 8 of 1896 (the Interpretation Ordinance, 1896) is on the lines of the Imperial Statute, 52 & 53 Vict. c. 63.

[1] The session ended December 28, 1896.

WINDWARD ISLANDS.

No. 9 of 1896 (the Solicitors' Remuneration Ordinance, 1896) gives to the Chief Justice and Attorney-General power to make rules as to the remuneration of solicitors for conveyancing, etc. **Legal profession.**

No. 11 of 1896 (the Stamp Ordinance, 1896) regulates and fixes the rates of stamp duties. They correspond generally to those scheduled to the Stamp Act, 1891 (54 & 55 Vict. c. 39), but include certain legacy and probate duties, and certain customs charges. **Stamps.**

No. 12 of 1896 (the Public Authorities Protection Ordinance, 1896) is a transcript of s. 1 of the Public Authorities Protection Act, 1893 (56 & 57 Vict. c. 61). **Public officers.**

No. 13 of 1896 (the Married Women's Property Ordinance, 1896) is an adaptation to the Colony of the English Acts of 1882 and 1893 (45 & 46 Vict. c. 75, and 56 & 57 Vict. c. 63). **Married woman.**

No. 14 of 1896 (the Coroners' Ordinance, 1896) makes magistrates *ex officio* coroners, and gives to the Governor power to appoint other coroners; magistrates may appoint deputy-coroners. All coroners and deputies are to be justices of the peace. The duties and jurisdiction of coroners as to inquests are defined (ss. 6–12). Coroners' juries are to consist of five men, four of whom must concur in the verdict (s. 13). **Coroner.**

Ss. 14–17 deal with the summoning, liability to serve, and remuneration of jurors.

SS. 18–20 deal with witnesses.

SS. 21–39 with procedure. By s. 34 a Coroner's Court is not an open Court.

SS. 40 and 41 deal with burial and exhumation.

SS. 42 and 43 prescribe the fees of medical practitioners.

SS. 44–54 prescribe penalties for various offences.

S. 55 makes depositions available at the trial of persons against whom verdicts of murder or manslaughter have been recorded in case of the death, absence from the Colony, or severe illness of the witness.

Schedule 1 contains forms, and schedule 2 a table of fees to medical practitioners.

No. 16 of 1896 (the Jury Ordinance, 1896) consolidates and amends the law relating to juries. **Jury.**

S. 3 gives a list of exemptions, including persons in the employment of any telegraph company, town wardens, and wardens of parochial boards.

S. 4 disqualifies persons who have been convicted of felony and who cannot read and write English.

SS. 6–12 deal with the making up of the jurors' book.

SS. 13–15 deal with the summoning of jurors, and ss. 16–19 with the impanelling.

WINDWARD ISLANDS.

S. 20 prescribes twelve jurymen in criminal trials, seven in ordinary civil actions, and five in summary cases, subject to a demand by either party for twelve jurymen.

SS. 21–26 deal with challenges, swearing, and counting of jurors.

SS. 27 and 28 enact that in trials for murder or manslaughter the jury must be unanimous, that in other criminal cases after two hours' deliberation the verdict of ten jurors is competent, and that in civil cases eight out of twelve, five out of seven, and four out of five must agree.

SS. 29–32 deal with the isolation and discharge of the jury. By s. 31 the Court has power in all criminal cases, and is bound in cases involving the life of the accused to direct that the jury shall be isolated.[1]

S. 33 validates verdicts given on Sunday.

S. 34 deals with special juries.

S. 35 with fees to jurors.

SS. 36–39 with fines on them.

S. 43 applies the English practice and procedure so far as applicable to the circumstances of the Colony.

Savings bank. No. 17 of 1896 (the Savings Bank Ordinance, 1896) consolidates the law relating to Savings Banks.

S. 10 fixes the rate of interest of 3 per cent.

S. 11 limits the annual deposits to £100 and the total deposits to £200.

S. 28 gives rule-making powers to the Governor.

Export duties. No. 22 of 1896 (the Export Duties Ordinance, 1896) imposes export duties for the up-keep of roads on cocoa, cotton, cotton seed, logwood, and spices.

Summary jurisdiction. No. 27 of 1896 (the Rectification of Magistrates' Judgments Ordinance, 1896) provides that returns of criminal cases heard by each magistrate shall be furnished to the Chief Justice monthly, or oftener if the Chief Justice so directs. Each list thus transmitted operates as an appeal on behalf of every convicted person included therein. The Chief Justice is given power, without hearing any argument, to reverse, set aside, or modify any judgment if he thinks it contrary to law or the punishment excessive, or to order further particulars, and also to admit any prisoner to be liberated on bail or on his own recognizances pending further investigation. These, however, are not to apply when convicted person has entered an appeal himself.

The Chief Justice, instead of exercising these powers, may order a case to be stated by the magistrate, which is heard and decided as an

[1] Compare Detention of Jurors Act, 1897 (60 & 61 Vict. c. 18).

appeal by the accused. Pending the decision, the accused must be liberated. *WINDWARD ISLANDS.*

Nos. 33–37 received the assent of the Governor during 1897, and are therefore not included in this statement.

Nos. 6 (the Magistrates Ordinance, 1896), 7 (the Prisons Ordinance, 1896), 21 (the Cocoa and Nutmegs Ordinance, 1896), 25 (the Civil Procedure Amendment Ordinance, 1896), 28 (the Supreme Court Ordinance, 1896), 31 (the Patents Ordinance, 1899), 32 (the Police Ordinance, 1896), are not published, but will be included in the new edition of the Revised Statutes which is now being prepared, and will then come into force.

(2) ST. LUCIA.[1]

Ordinances passed, 20.

Uniforms. No. 5 of 1896 follows the (Imperial) Uniforms Act, 1894, 57 & 58 Vict. c. 45.

Immigration. No. 8 of 1896 (the Immigration Ordinance, 1891, Amendment Ordinance, 1896) enacts a number of minor amendments to the principal Act.

S. 9 deals with the right of Indian immigrants to a return passage, and the commutation of such right for a bounty or grant of land.

S. 15 deals with the case of an Indian immigrant dying intestate leaving a wife and children in the Colony, and provides that the Protector of Immigrants before distributing his property shall inquire as to whether the deceased left a wife and children in India.

Friendly Society. No. 11 of 1896 (the Friendly Societies Ordinance, 1896) differs from the Imperial statute (59 & 60 Vict. c. 25) as follows. Cattle Insurance societies are not included; while Loan societies, Building societies and Co-operative societies are. Societies carrying on banking cannot be registered.

The interest of members is restricted to £200, except in building and co-operative societies, when the limit is £400.

Lands returns. No. 19 of 1896 (the Lands Returns Ordinance, 1896) provides a form to be filled up by owners on declaration showing the land held by them and how it is cultivated.

Local loans. No. 20 of 1896 (the Land Credit Ordinance, 1896) provides for a Colonial guarantee of 3 per cent. on certain loans to sugar estates, and on the security of other crops.

[1] The session ended December 9, 1896.

WINDWARD ISLANDS.

(3) ST. VINCENT.[1]

Ordinances passed, 10.

Interpretation. No. 1 of 1896, an Interpretation Ordinance, is on the same lines as the Imperial statute (52 & 53 Vict. c. 63).

Colonial debt. No. 2 of 1896 (the Loan Ordinance, 1896) authorizes the raising of a loan of £5000 by the Crown agents in London.

Licence duties and intoxicating liquors. No. 10 of 1896 (the Licences Ordinance, 1896).

Part I. (ss. 1–5) is preliminary.

Part II. (ss. 6–39) deals with liquor licences.

S. 9 provides for six classes of licences, *i.e.*—

(i.) Wholesale licences, £5 half yearly;

(ii.) Retail town licences, £20 to £7 10*s.* half yearly;

(iii.) Retail country licences, £7 10*s.* half yearly;

(iv.) Retail Grenadine licences, £5 half yearly;

(v.) Hotel licences, £3 half yearly (sale only to lodgers and *bonâ fide* travellers);

(vi.) Occasional licences, 5*s.* per diem.

S. 15 provides that a certificate of character by the chief of police shall be necessary for licences other than wholesale.

S. 16 prohibits sale of spirits under 20 per cent. below proof.

S. 17 regulates hours of closing. Classes ii., iii., and iv. are to close from 9 o'clock on Saturday night till 6 o'clock on Monday morning, and from 8 o'clock on other nights till 6 o'clock on the following morning.

Class v. are to close from midnight till 1 o'clock on Sunday, Good Friday and Christmas Day afternoons, and till 6 o'clock on other mornings.

S. 24 gives power to a magistrate to cancel a licence for offences against Part II. of the Act, or against any customs or revenue law, or for illegal dealing with liquor.

S. 25 provides for an appeal against cancellation of a licence.

S. 28 provides that the name of the licencee and the fact of the licence shall be painted up on the premises.

S. 30 gives the chief of police, excise officers, powers of entry.

S. 32 makes permitting drunkenness, or gambling, or selling liquor adulterated with pernicious substances, an offence.

[1] The session ended December 31, 1896.

Part III. (ss. 40–57) deals with various miscellaneous licences.
Part IV. (ss. 58–76) contains supplemental provisions.
S. 64 makes accused persons competent witnesses.
S. 69 gives periods of imprisonment in default of payment of fines.
S. 72 gives part of penalties to informers.
S. 74 provides for a register of licences.
S. 76 gives to the Governor in Council rule making powers.
Sch. A gives a form of return of liquor purchased and disposed of by licensed persons.
Schs. B and D give tariffs of licence duties (other than liquor).
Schs. C and E give forms of these licences.
Sch. F gives a form of conviction.

MODES OF LEGISLATION IN THE BRITISH COLONIES.

In August, 1895, Lord Herschell, the President of the Society, in a letter to Mr. Chamberlain, Secretary of State for the Colonies, enclosed a series of questions by means of which it was sought to obtain information respecting the common and Statute law of the several colonies, the methods of legislation, the publication, revision, and consolidation of Statute law, and matters connected therewith.

These questions were transmitted by Mr. Chamberlain to the respective Colonial Governments.

The first instalment of the replies received from the Colonial office was published in the first number of the *Journal* (vol. i. pp. 134 to 190), and the second instalment in the second number (vol. i. pp. 358 to 385). Since then the replies now printed have come to hand. It will be found that a large number of the Colonial Governments have responded to the invitation to forward replies, and it is hoped that the replies still outstanding will be forwarded in time for insertion in the next number of the *Journal*.

The questions addressed to the Colonial Governments were as follows:—

QUESTIONS WITH RESPECT TO THE STATUTE LAW OF THE BRITISH COLONIES.

I.—Common Law as the Basis of Statute Law.

(*a*) What is the common law of the Colony? Under what circumstances and by whose authority was it introduced?

(*b*) Is there any law applying exclusively to particular races or creeds?

II.—Statute Law.

(*a*) Of what does the statutory or enacted law of the Colony consist? To what extent is it embodied in charters, regulations, Orders in Council, Ordinances, or Acts?

(*b*) To what extent do the Statutes of the United Kingdom operate in the colony by virtue of either—

(i.) Original extension of English law to the Colony;

(ii.) Express provisions of any Order in Council or charter; or

(iii.) Express adoption by the Legislature of Colony?

(*c*) Is the Statute law of any other colony in force in the Colony? (This may happen where one colony has been severed from another.)

(*d*) Is any code or other body of enacted law of non-British origin in force in the Colony?

III.—Methods of Legislation.

(*a*) By whom are drafts of legislative measures prepared? Is there any official draughtsman? If so, by whom is he appointed, to whom is he responsible, and what are his staff and duties? Do his duties extend to measures introduced by private or non-official members of the legislative body?

(*b*) What is the constitution of the legislative chamber or chambers through which measures have to pass? (A reference to Statute law, or charter, or Order in Council, or to any recognized text-book will suffice.) If there are two chambers, may measures be introduced in either?

(*c*) Are draft measures published before introduction, or before any other stage? If so, under what rules?

(*d*) Through what stages does a measure pass before it becomes law?

(*e*) Is any opportunity afforded for referring measures, while in course of passage through the Legislature, to any special officer or committee on points of form?

(*f*) Have any steps been taken to secure uniformity of language, style, or arrangement of Statutes either by means of a measure corresponding to "Brougham's" Act (13 & 14 Vict. c. 21), or to the Interpretation Act, 1889 (52 & 53 Vict. c. 63), or by official instructions or otherwise?

(*g*) Is there an annual session of the Legislature? Are there any fixed or customary periods of session?

(*h*) How are the Acts or Ordinances of the Colony numbered or distinguished? Are they numbered by reference to the calendar year, or to the regnal year, or in any other way? Is it the practice to confer for convenience of citation a "short title" on each Act or Ordinance? How long has this practice been followed?

(*i*) Are private Bills (if any) treated separately, and under different conditions from public Bills? On what principle is the line drawn

between public and private Bills? Are private Acts or Ordinances separately numbered?

(*j*) Does any practice exist of accompanying a measure on its introduction by an explanatory memorandum?

IV.—Publication of Statutes.

(*a*) In what manner and under what authority are Statutes promulgated? What evidence is accepted of a Statute having been duly passed?

(*b*) In what form or forms and under what authority are Statutes printed for publication?

(*c*) Are the Statutes of each session published in a collected form at the end of the session?

(*d*) Are the periodical volumes of Statutes accompanied by (1) an index and table of contents, (2) a table showing the effect on previous legislation?

(*e*) What collective editions (if any) of the Statute law of the Colony have been published, and whether by the Government or by private enterprise? Are these or any of them periodical? Do such editions comprise those Acts of the United Kingdom in force in the Colony?

(*f*) Is there any edition of "Selected Statutes" corresponding to Chitty's "Statutes of Practical Utility"?

(*g*) How are private Acts published?

V.—Revision of Statutes.

(*a*) Have any steps been taken for the revision and expurgation of the Statute law, whether periodically or otherwise? What machinery, if any, exists for this purpose?

(*b*) Is there any edition of "Revised Statutes" showing those actually in force? If so, under what authority is it prepared and published, and what is the date of the latest edition? Is it published at periodical intervals, or how otherwise? Are the contents arranged alphabetically, chronologically, or on any other principle?

VI.—Indexing of Statute Law.

Is there any general index to the Statute law of the Colony? If so, on what principle is it arranged and after what interval is it revised? Does it include both public and private Acts or Ordinances, and the Statutes of the United Kingdom which are in force in the Colony? Is it accompanied by any tables showing how each Statute has been dealt with? What is the date of the latest edition?

VII. Consolidation and Codification.

(*a*) What steps have been taken to consolidate the whole or particular parts of the Statute law, or to codify any branches of the law?

(*b*) Does any machinery exist for this purpose? Is the work now in progress?

(*c*) What "codes" are now in force in the Colony? When and by whom were they prepared, and on what materials were they based?

VIII.—Subordinate Legislation.

What official or other machinery exists for the preparation, passing, or promulgation of measures of subordinate legislation, such as rules or orders made by the Governor, or a minister or department under the express authority of Statute or Ordinance? Is there any, and what collection of, or index to, such subordinate measures?

To these questions the following for the replies have been received by the Society:—

BERMUDA.[1]

I.—Common Law.

(*a*) The common law of the Colony is that of England, introduced on the original settlement of the Colony.

(*b*) There is no law applying exclusively to particular races or creeds, unless under this head should be included Acts relating to the Church of England which constitute it, in a limited sense, the established Church of the Colony.

II.—Statute Law.

(*a*) The Statute law of the colony consists of—

(1) English Statutes applicable to the circumstances of the Colony at the time of its settlement.

(2) Acts of the Legislature, the earliest of which now in force were enacted in 1690.

(3) Regulations and bye-laws made by the Governor in Council, or by certain public boards, under Statutory authority.

(*b*) The Statutes of the United Kingdom operate in the Colony only to the extent mentioned above, or where by their terms or construction they are applicable to the whole empire. In one or two instances English Statutes have been expressly adopted by local Acts: *e.g.* in 1815 an Act was passed adopting the Statute 7 Jac. i. c. 5, and other

[1] Prepared by Reginald Gray, Esq., Barrister-at-Law.

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subsequent statutes and parts of statutes for the security of Justices of the Peace, constables, etc., but there is no recent instance of such legislation.

(*c*) No Statute law of any other Colony is in force here.

(*d*) No code or other body of enacted law of non-British origin is in force here.

III.—Methods of Legislation.

(*a*) Drafts are prepared by the Attorney-General of government legislative measures, and of any other measures which he considers it desirable to adopt. There is no other official draftsman. The Attorney-General is appointed by the Crown, and he has no official staff. His duties do not extend to measures introduced by private or non-official members of the Legislature. Important measures originating with private members are usually brought in by a Committee of the House of Assembly, or a joint committee of the Legislative Council and Assembly, appointed for the purpose, with leave to employ counsel, the expense being defrayed out of the public treasury.

(*b*) There are two legislative chambers—the Legislative Council, the members of which, usually numbering nine, are appointed by the Governor; and the House of Assembly, consisting of thirty-six elected members, four from each of the nine parishes. Measures may be introduced in either chamber.

(*c*) Draft measures are not published before introduction or at any other stage.

(*d*) Every measure is read three times, and considered in committee, in each legislative chamber, and on receiving the Governor's assent becomes law, subject to Her Majesty's power of disallowance. If a measure has a suspending clause, it does not come into operation until Her Majesty's assent thereto is officially published in the Colony.

(*e*) No opportunity is afforded for referring measures to any special officer or committee for any purpose.

(*f*) No steps have been taken to secure uniformity of language, style, or arrangement of Statutes.

(*g*) There is an annual session of the Legislature, commencing usually in May, and lasting about six or seven months, each House sitting usually twice a week. A large portion of each session is occupied in passing continuing acts, it being the practice of the House of Assembly to embody a duration clause in most bills, the avowed object being to enable that body to exercise a control over legislation which is impossible in the case of permanent acts.

(*h*) Until recently the Acts of each session have been consecutively numbered, and whenever there were two or three sessions in one year, the practice led to great inconvenience. At the beginning of 1896 the system was changed, and the Acts are now numbered consecutively by reference to the calendar year, regardless of the session. Most modern Acts have a short title given, usually by the first section. Last year The Short Titles Act, 1896, conferred short titles on eighty-one Acts which had none. The practice of conferring short titles on Acts has been followed for upwards of thirty years, and during that time many of the earlier Acts have, by amending Acts, been provided with short titles. During the last three or four years several Acts have no title except the short title: *e.g.* the Act mentioned above was introduced as a bill entitled "The Short Titles Act, 1896."

(*i*) Private bills have hitherto been treated on the same conditions as public bills. Almost the only private bills passed have been to incorporate local companies for various purposes, the Legislature having failed up to the present time to pass a general incorporation Act on the lines of the English Companies Act, although several attempts have been made.

(*j*) No practice exists of accompanying a measure on its introduction by an explanatory memorandum, but in some cases in which bills have been drawn by counsel for a legislative committee, such a memorandum has been prepared by counsel for the information of the committee.

IV.—Publication of Statutes.

(*a*) The Colonial Secretary is required to have inserted in the local newspapers the title and duration of every Act immediately on its passing. This would probably be accepted in any local court as evidence of the fact.

(*b*) Acts are printed by the Queen's printers as soon as practicable after being passed, the printed proofs being submitted to the Colonial Secretary for comparison with the original Act in his custody.

(*c*) The Acts of each year are issued in a collected form early in the following year to members of the Legislature and other officials. They are not reprinted for this purpose, but sets of the separate Acts are stitched together in a paper cover.

(*d*) The annual issue of the Acts is accompanied by a list, but not by an index nor a table showing the effect on previous legislation.

(*e*) In 1862 the first collective edition of the Statute law of the Colony, containing all the Acts in force to the end of 1860, was printed in one volume at the public expense. This was prepared by the then Chief

BERMUDA. Justice, the late John Harvey Darrell, C.M.G. The only other compilation of the Statute law, comprising all the Acts in force at the end of 1883, was prepared by Reginald Gray, Esq., a practising barrister in the Colony, under legislative sanction, and published in two volumes early in 1884 by Wildy & Sons, London. This edition had a chronological index of all the Acts passed by the Legislature from 1690 to 1883 inclusive, with notes showing which of such Acts had been repealed or had expired, and how any of them had been affected by subsequent legislation. The two volumes were paged consecutively, and the second contained an exhaustive alphabetical index to the whole work. Neither of the above compilations comprised Acts of the United Kingdom in force in Bermuda.

(*f*) There is no edition of "Selected Statutes."

(*g*) Private Acts are published in the same way as public Acts.

V.—Revision of Statutes.

(*a*) During the session of 1883, in which the compilation of 1884 was authorized, an Act was passed repealing certain obsolete enactments, and providing for the omission of a number of Acts the operation of which had been exhausted, or the object of which had been fulfilled. No machinery exists for revision, periodical, or otherwise.

(*b*) There is no edition of Revised Statutes, but the edition of 1884 practically contained the then existing local statute law. The contents of this edition were arranged chronologically.

VI.—Indexing of Statute Law.

Since the index published with the compilation of 1884, no general index has been published until 1896, when Reginald Gray, Esq., prepared an alphabetical index to the whole existing Statute law from 1690 to the end of the session of 1895–6, which was printed and published by Wildy & Sons, London. With this index were included (1) a chronological table of all the Acts in the compilation of 1884 which had expired, or had been amended or repealed since 1883, with references to the later Acts affecting them; and (2) a chronological table of the Acts from 1884 to 1896, both inclusive, with notes showing how those Acts had been affected by subsequent legislation. Both public and private Acts were included in the index and chronological tables.

VII.—Consolidation and Codification.

(*a*) During the session of 1896 a Joint Committee of the Council and Assembly, appointed to consider this question, recommended the passing of an Act providing for the appointment of a Statute Law Consolidation Committee, consisting of two members of the Council and three members of the Assembly, with power to have such Acts consolidated as the committee deem expedient, or as the Legislature should require. The Joint Committee also recommended that an annual grant of £100 a year for five years should be placed at the disposal of the Consolidation Committee to defray the cost of preparation of the consolidating Acts, and a further recommendation was made to the effect that such Acts should not be open to amendment during their passage through the Legislature, but should be accepted or rejected in their entirety. An analytical table showing where the provisions of the consolidated Acts were contained in the consolidating Act, and which, if any, were omitted, and the reason therefor, was to accompany each bill submitted. It is probable that the recommendations of the committee will be acted on during the session of 1897.

(*b*) No codes are in force in the Colony.

VIII.—Subordinate Legislation.

Bye-laws and regulations made by the Governor-in-Council, or the Board of Public Works or other executive authority, are either prepared by or submitted for the revision of the Attorney-General.

There is no collection of or index to such subordinate measures.

CANADA.[1]

(*The references are to Dominion legislation, unless the Provinces are specially mentioned. Most of these answers would, however, apply as well to provincial legislation.*)

I.—Common Law.

(*a*) The common law of the province of Quebec, except in commercial matters, is the *Coutume de Paris:* the common law of the other provinces, as well as of Quebec in commercial matters, is the common law of England. By the Canadian Bills of Exchange Acts of 1890 and 1891, the common law of England, when not inconsistent with those Acts, applies to bills of exchange, promissory notes, and cheques. The introduction of the Common Law in the several provinces took place as follows:—

[1] Prepared by Fred A. McCord, Law Clerk of the House of Commons, Canada.

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(1) Quebec: on the first settlement of the country by the French in 1608.

(2) Ontario: by the first Act of the Legislature of Upper Canada (now Ontario) in 1792.

(3) Nova Scotia, although ceded by France in 1713, appears to have been treated as a Colony by settlement, to which, consequently, the law of England extended as part of the personal law of the first English settlers.

(4) New Brunswick (separated in 1784 from Nova Scotia: see above).

(5) Prince Edward Island (separated in 1770 from Nova Scotia: see above).

(6) North-West Territories: with the charter of the Hudson's Bay Company in 1670.

(7) Manitoba (until the 15th of July, 1870, was part of the North-West Territories: see above).

(8) British Columbia: on the first settlement by the English.

(*b*) There is no common law applying exclusively to particular races or creeds.

II.—Statute Law.

(*a*) The statutory or enacted law of Canada consists of—

(1) Imperial Statutes extending to Canada;

(2) Imperial Orders in Council made under such statutes and extending to Canada;

(3) Statutes of the Parliament of Canada, and, within each province, Statutes of the legislature of that province;

(4) Orders of the Governor-General in Council, made under Dominion Statutes, and, within each province, orders of the Lieutenant-Governor thereof in council made under provincial statutes.

(*b*) Besides Imperial Statutes made applicable "by the express words or intendment" thereof (for which see Tarring's Law relating to the Colonies), Imperial Statutes operate in Canada as follows:—

(1) By original extension of English law to the Colony, so far as applicable to the circumstances therein, in the cases of all the provinces, except Ontario and Quebec. (But see also under paragraph 3 as to North-West Territories, Manitoba, and British Columbia.) In Nova Scotia the Imperial Statutes held by the courts to be in force were the exception, and only such as were in amelioration of the common law or increased the liberty of the subject.

(2) By virtue of Orders in Council, to the extent authorized by the Statutes under which they are made.

(3) By virtue of express adoption by the Legislature, as follows—

1. Ontario : the first Act of the Legislature of the province (then Upper Canada) in 1792 introduced the laws of England as they stood on the 15th of October, 1791, in all matters of controversy relative to property and civil rights, and the English law of evidence.
2. North-West Territories: previous to the 15th of February, 1887, the Statute law of England of 1670 (date of Hudson's Bay Company charter), as altered by Dominion and territorial legislation; since the 15th of February, 1887, by virtue of Dominion Act of 1886, c. 25, the civil and criminal laws of England in force on the 15th of July, 1870 (date of North-West Territories becoming part of Canada), subject to amendments by Imperial, Dominion, and territorial legislation.
3. Manitoba : previous to the 15th of July, 1870 (when the province was constituted), the law of England as it stood in 1670; in 1874, by Act of provincial Legislature, the law of England, as it stood on the 15th of July, 1870, in matters of controversy relative to property and civil rights, and as to evidence and procedure; in 1888, the Dominion Parliament, for the removal of doubts, declared (51 Vict. c. 33) English law, as it stood on the 15th of July, 1870, in force in Manitoba as to matters within the jurisdiction of that Parliament, so far as applicable to the province and so far as unaltered by Imperial or Dominion legislation.
4. British Columbia : by provincial Act of 1871, the civil laws of England, as they existed on the 19th of November, 1858, so far as not from local circumstances inapplicable.
5. Quebec : by ordinance of Governor in Council, 1785, English rules of evidence in commercial matters (see Civil Code, article 1206); by provincial Act, 1849, English law in actions on bills and notes, when Canadian law is silent (see Civil Code, articles 2340, 2341).

(*c*) There is no Statute law of any other Colony in force in Canada.

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(*d*) The Civil Code of Quebec consists mostly of law of non-British origin; *i.e.* of the French civil law (see 7).

III.—Methods of Legislation.

(*a*) For each house of the Canadian Parliament there is a law clerk, an officer whose duties include those of a parliamentary counsel as well as those of a legislative draftsman. The law clerk of the Senate is appointed by that body. The law clerk of the lower house, in which the great majority of measures are introduced (ten out of twelve of the ministers usually belonging to that house), is also law clerk of the government, and formerly (before Confederation) held a separate appointment as such from the government. He is appointed by Mr. Speaker, and has one assistant. The preparation of measures for private members is not part of the law clerk's duties.

(*b*) There are two legislative chambers: the Senate, appointed for life by the Crown; the Commons, elected by the people.

(*c*) Measures are not published until after introduction.

(*d*) A bill passes through practically the same stages as in England.

(*e*) There is no arrangement yet for referring bills while passing through Parliament to any one on points of form.

(*f*) The year before Brougham's Act, the first Canadian Interpretation Act was passed (12 Vict. c. 10), and it is almost identical with the one now in force.

(*g*) Twelve months must not intervene between sessions of Parliament (B.N.A. Act, 1867, s. 20). There are no fixed periods of session. Since 1867, Parliament has usually met in January, February, or March, and the session has lasted, on an average, ninety-one days.

(*h*) Acts of Parliament are distinguished by the regnal year, and are numbered; but in drafting, since 1892, the practice has been to cite an Act as of the year of Our Lord, thus: "chapter 29 of the Statutes of 1894." A short title is usual. The earliest instance of one appears to be in 1849.

(*i*) A private Bill must pass through the same stages as a public Bill; but, besides, public notice by advertisement must be given of the intention to introduce it, it must be based on petition, and it is referred to a special committee after its second reading. The distinction between private and public Bills is, broadly stated, that the latter affect the general interests of the community or involve considerations of public policy. Private Acts are not numbered separately, but consecutively after the public Acts of the session.

(*j*) It is not the practice to accompany a measure on its introduction

with an explanatory memorandum, although in some instances this has been done.

IV.—Publication of Statutes.

(*a*) An Act comes into force on the day it is assented to in Her Majesty's name, unless some later date is provided in the Act. Evidence of an Act having been duly passed may be either (1) by the certificate of the "Clerk of the Parliaments," who has the custody of the originals; or (2) by the imprint of the Queen's printer.

(*b*) Public Acts of general utility are printed in the Canada *Gazette* by the Queen's printer, by order of the Governor in Council, immediately after they have received the royal assent.

(*c*) The Acts of each session are also printed in a collected form, by the Queen's printer, at the end of the session: one volume containing the public Acts, together with such Orders in Council and proclamations or other documents, and such Imperial Acts, as the Governor in Council directs; the other volume containing the local and private Acts.

(*d*) Each volume is indexed and has a table of contents, and since 1892 the effects on previous legislation are shown.

(*e*) There is no collective edition of the Statutes of Canada. There are only the sessional volumes already mentioned, and the revised statutes mentioned in V.

Collections of the Statutes of the old province of Upper Canada were published in 1818 by the Government, and in 1831 by private enterprise. A collection of the laws of Prince Edward Island from 1773 to 1862 was published by the local government in 1862, and a supplement in 1868 brought the collection down to that year.

Such Imperial Acts as are constitutional are included in most of the editions of consolidated or of revised Statutes. A collection of Imperial Acts affecting Ontario, chiefly those relating to the constitution of the province, was published by the Ontario Government in 1875.

(*f*) There is no edition of "Selected Statutes."

(*g*) Private Acts are published in the same manner as public Acts.

V.—Revision of Statutes.

(*a*) There is no machinery for the periodical revision of the public Statutes.

(*b*) The Revised Statutes of Canada, the only revision since Confederation, were prepared by commissioners appointed by the Government, and came into force on the 1st of March, 1887. To ascertain the public Statutes actually in force, recourse must be had to these Revised Statutes

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and to the subsequent sessional volumes. The contents of the Revised Statutes are arranged arbitrarily, as follows: constitution and political rights, executive government and public officers; public departments: trade and commerce: companies and corporations; administration of justice.

VI.—Indexing of Statute Law.

There is no general index published by authority. The Revised Statutes are accompanied by tables of the Acts passed prior to Confederation by the different provinces now comprised in the Dominion of Canada, and of Acts of the Dominion, showing how much of each is in force, and how each has been dealt with.

VII.—Consolidation and Codification.

(*a*) The Revised Statutes above-mentioned are a consolidation of the public general Statutes.

(*b*) No machinery exists for the purpose of consolidation.

(*c*) Of Dominion laws the only codes are (1) the Bills of Exchange Act, 1890, which is a copy, with slight changes, of the English Act; (2) the Criminal Code, 1882 (55 & 56 Vict. c. 29), which is based upon the English draft code of 1880, Stephen's Digest, and Canadian Statutes.

In the province of Quebec there are two codes. The laws of Lower Canada (now Quebec) in civil matters, which were mainly the *Coutume de Paris*, modified by provincial statutes or by the introduction of portions of the law of England in peculiar cases, were embodied, by commissioners, in the Civil Code of Lower Canada, which came into force the 1st of August, 1866. The same commissioners prepared a Code of Civil Procedure, which came into force on the 28th of July, 1867. Both codes have been repeatedly amended, but there has been no official second edition of either.

VIII.—Subordinate Legislation.

There is no special machinery for the preparation or passing of measures of subordinate legislation. Those "requiring publication" are published in the Canada *Gazette*. The Consolidated Orders in Council of Canada, of 1889, although published by authority, are but a partial collection of the Orders in Council then in force.

LABUAN.[1]

I.—Common Law.

(*a*) The common law of Labuan is the common law of England except where special provision has been made by local Statute law. The island was ceded by the Sultan of Brunei in 1846, and became a Crown Colony, and the English common law necessarily followed.[2]

(*b*) The following laws apply exclusively to particular races or creeds:—

No. 4 of 1891, under which the Chinese can form a Board for the representation of their wants, and the consideration of the interests of the Chinese community.

No. 6 of 1891 for the protection of Immigrants from British India imported under the "indenture" system as labourers.

No. 5 of 1894 providing for the appointment of an Emam to assist the Judge of the General Court in the settlement of disputes concerning marriage, divorce, and probate matters between Mahommedans according to Mahommedan Law or Custom.

II.—Statute Law.

(*a*) The Statute Law of the Colony consists mainly of Ordinances, enacted formerly by the Governor and Legislative Council, and now by the Governor, subject to the approval of the Colonial Office, under Letters Patent framed under the Great Seal, on the 6th of November, 1889.[3] The currency is regulated by an Order in Council, The Labuan (Coinage) Order, 1895.[4]

(*b*) Except in so far as the Statutes of the United Kingdom enacted previously to the founding of the Colony may be deemed to be in force, the Statutes of the United Kingdom as such have no operative force in the Colony, though some of them would undoubtedly be taken as affording a guide in case of dispute, *e.g.* the Bills of Exchange Act. There are no express provisions of any Order in Council or Charter, as to the operation of the Statutes of the United Kingdom, nor have any such statutes been expressly adopted by the Colonial Legislature.

(*c*) The Statute law of no other Colony is in force in Labuan.

(*d*) No code or other body of enacted law of non-British origin is in force in Labuan.

[1] Prepared by the Hon. Leicester P. Beaufort, Governor of North Borneo and Labuan.

[2] Probably because there was no pre-existing law [*Ed.*].

[3] Printed in "Statutory Rules and Orders, Revised," vol viii. p. 504.

[4] Printed in "Statutory Rules and Orders," 1895, p. 796.

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III.—Methods of Legislation.

(*a*) Drafts of legislative measures are prepared by the Governor. There is no official draftsman, and there has never been any Law officer.

(*b*) There is no legislative chamber or council. Formerly there was a legislative council, composed almost entirely of officials; but with the decay of the Colony the Council became a mere name. On the transfer of the Colony to the administration of the Chartered Company of British North Borneo in 1889, the Legislative Council ceased to exist.

(*c, d, e*) An Ordinance enacted by the Governor is law, until the Secretary of State has notified him that it has been disallowed as regulated by the Letters Patent.

(*f*) No legislative or other steps have been taken to secure uniformity of language.

(*h*) The Ordinances are numbered consecutively in the calendar year. A short title is always now given. That practice appears to have been followed since 1870.

(*i*) There are no private Ordinances existing.

(*j*). It follows from the above replies that no explanatory memorandum can accompany the introduction of any measure except as a preamble.

IV—Publication of Statutes.

(*a*) Ordinances are now printed in the Government *Gazette*, accompanied or followed by a proclamation that Her Majesty's pleasure has been signified that the Ordinance shall not be disallowed. The question of proof of an Ordinance has not arisen, but if a sealed copy were not obtainable, the fact of an ordinary copy coming from the proper official custodian would probably be sufficient.

(*b*) Ordinances are now printed in the Government *Gazette*, in the exact form in which they are submitted to the Secretary of State for allowance.

(*c, d, e, f*) The Ordinances are not otherwise collected, and there is no published index. Those enacted from 1849–1855 inclusive were collected and printed in Singapore.

(*g*) There are no private Ordinances.

V.—Provision of Statutes.

No steps are taken systematically for a revision of the Statute law. There is no machinery for the purpose, and owing to its small volume this would scarcely seem to be necessary.

VI.—Indexing of Statute Law.

There is no general index to the Statute law of Labuan.

VII.—Consolidation and Codification.

(*a*, *b*) Practically no codification or consolidation has taken place, and there is no machinery for the purpose.

(*c*) The Indian Criminal Code and the Indian Codes of Civil and Criminal Procedure, and the Indian Evidence and Contract Acts have been partly adopted in so far as they are applicable to the circumstances of the Colony.

VIII.—Subordinate Legislation.

The Governor alone makes rules or orders as authorized by an Ordinance, and there is no machinery for the preparation, passing, or promulgation of these, except their actual publication in the Colony, and then being printed in the Government *Gazette*. Beyond the index to the *Gazette* compiled annually, there is no index to Ordinances or rules.

General.

Previous to 1890 there appears to have been but very little publication of any Ordinances or rules, and no index. In some cases there is not even a single authenticated copy of the Ordinance, though a manuscript copy kept in the Colony has been treated as authentic, by virtue presumably of its being found with others properly authenticated in proper custody. In some cases Ordinances have been printed, but the practice has not been habitual. In 1857 a complete list of Ordinances up to that date, with an index, was published: probably two complete copies of this could not be found in the Colony.

Since the British North Borneo Company took over the administration of the Colony in January, 1890, an official *Gazette* has been regularly published every month, in which are printed *inter alia* Ordinances, proclamations, and rules, as they are promulgated. From time to time the more important Ordinances, or those in force at the present time, have been republished therein for general information; but this has not been done systematically, nor have such been collected into one volume

THE SEYCHELLES ISLANDS.[1]

(Dependency of Mauritius).

I.—Common Law.

The law of these islands is entirely statutory.
There is no law applying exclusively to particular races or creeds.

II.—Statute Law.

(*a*) The statutory or enacted law consists of—

(1) The French Civil Code of 1814.
(2) The French Code of Civil Procedure of 1814.
(3) The French Commercial Code of 1814.
(4) The Mauritius Penal Code, common to Mauritius and Seychelles.
(5) Various ancient Arrêtés of the French Government which were in force when the islands were ceded to England in 1814, and which have not been repealed.
(6) Ordinances passed by the Mauritius Legislature for that Colony and its dependencies, of which Seychelles is one.
(7) Ordinances passsed by the Mauritius Legislature expressly for Seychelles.
(8) Ordinances originally passed by the Mauritius Legislature for Mauritius alone, and subsequently extended to Seychelles by proclamation of the Governor in Executive Council.
(9) Regulations and Orders passed by the Governor of Mauritius under laws in force.
(10) Laws called "Regulations" passed by a local legislative board, called the "Board of Civil Commissioners," which existed from 1872 to 1889.
(11) Ordinances passed by the local Legislative Council created in February, 1889.
(12) Orders and Regulations passed by the Administrator in Executive Council under laws in force.
(13) Orders in Council of Her Majesty the Queen, Letters Patent and Royal Instructions creating the present constitution.
(14) An Order in Council creating an Assize Court to try capital offences.
(15) Certain English statutes promulgated in Mauritius and its dependencies by proclamation or Government notice.

[1] Prepared by the Hon. R. Myles Brown, Judge.

(16) Such English Statutes as are applicable to all British possessions.

(*b*) No statutes of the United Kingdom operate in the Seychelles Islands—

1. By virtue of original extension of the English law to the Dependency; or
2. By express provision of any Order in Council or charter; or
3. By express adoption by the legislature of the dependency.

(*c*) There is no Statute law of any other colony than Mauritius in force in the Seychelles.

(*d*) The French Civil Code, Code of Civil Procedure, and Commercial Code of 1814 are in force in the dependency, with certain modifications locally enacted.

III.—Method of Legislation.

(*a*) There is no official draftsman. There being no Attorney-General or other law officer of the Crown, the drafts of legislative measures are generally prepared by the judge, who is the only official legal member of the executive and legislative councils. In some instances they are prepared by the heads of departments which they specially concern, but in that case they are submitted to the judge for examination before introduction.

Non-official members prepare their own drafts.

(*b*) There is but one legislative chamber, called the "Legislative Council," which was constituted by Order in Council of the 17th of December, 1888,[1] and Letters Patent of same date.[2] It is composed of three official and three non-official members, and is presided over by the Administrator.

(*c*) Draft measures are published after the first reading and before the second reading, in accordance with the standing Rules and Orders of the Council.

(*d*) Notice is given in the Agenda three days before a meeting that the Ordinance will be introduced and read a first time, and with such agenda a copy of the draft Ordinance is sent to each member. The Ordinance is then published in the official *Gazette* as read a first time. Not less than fifteen days after the first reading the Ordinance is read a second time, notice being given of such second reading in the same way

[1] Printed in "Statutory Rules and Orders Revised," vol. viii. p. 552.

[2] *Ibid.*, p. 554.

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as for the first. Immediately after the second reading the Council goes into committee, and the Ordinance is examined clause by clause. If no alteration is made in committee, the council then resumes its open sitting, and the third reading is moved and the Ordinance is passed. If there has been any alteration, the Ordinance is not read a third time until fifteen days have elapsed, and notice of such third reading is given as for the first two readings.

After the Ordinance is passed, if there is urgency or if the introduction has been previously approved of by the Governor of Mauritius, the Administrator assents to it, and it is put in force by publication in the Government *Gazette*. If not urgent the Ordinance is not assented to until the Governor's authority has been obtained. All Ordinances are subject to disallowance by the Queen; such disallowance takes effect from the date of its publication in the local official *Gazette*.

(*e*) Ordinances may be referred to a select committee, upon motion to that effect.

(*f*) No steps have as yet been taken, by means of special measures, to secure uniformity of language or arrangement of statutes.

(*g*) The rules provide that a sitting of the legislature shall be held on the first Saturday of each month, and other meetings are called as required.

(*h*) The Ordinances are numbered by reference to the calendar year. It is the practice to confer a "short title" on each Ordinance. This practice has been followed since the Legislative Council was constituted in 1889.

(*i*) Before any private Ordinance is introduced, there must be "adequate and timely notification, by public advertisement or otherwise, of the parties' intention to apply for such Ordinance" (clause 31, Royal Instructions, Mauritius and its Dependencies, December 27, 1888). Before assenting to any such Ordinance the Governor or Administrator must require proof of such notification, and he must certify on the Ordinance that such notification has been made. Private Ordinances, whereby the property of any private person may be affected, must contain a clause saving the rights of the Queen, Her heirs and successors, and of all bodies politic and corporate, and of all other persons except such as are mentioned in such Ordinance, and those claiming by, from, and under them. Private Ordinances are not separately numbered.

(*j*) It is not the rule to accompany a measure on its introduction with an explanatory memorandum, but this is sometimes done when the Administrator introduces an Ordinance. The practice is for the member introducing the Ordinance to briefly explain its object and scope, and such explanations are summarized by the clerk on the Council minutes.

A Report on the Ordinance from the judge usually accompanies it to the Governor of Mauritius and Secretary of State for the Colonies.

IV.—Publication of Statutes.

(*a*) Ordinances are promulgated by publication in the Government *Gazette* by authority of the Administrator.

At the foot of each Ordinance the Clerk of Council certifies that such Ordinance has been passed, and the publication of the Ordinance so certified is accompanied by a notice from the Government clerk that it is published by order of the Administrator. Such publication is accepted as evidence of the Ordinance having been duly passed.

(*b*) Ordinances are printed for publication under the authority of the Administrator, to whom the *Gazette* is submitted for approval before it is issued.

The Ordinance is headed—

"Ordinance No. of (year).
Seychelles.
(*name in full*) Administrator.

"Date (referring to the regnal year)"
and at the foot of it is written—
"Passed in the Legislative Council this (follows date).
(Signed) "Clerk of the Legislative Council.
"Assented to in Her Majesty's name this day of
(Signature of Administrator.)"

(*c*) The Royal instructions require that at the earliest practicable period at the commencement of each year, a complete collection should be published, for general information, of all Ordinances enacted during the preceding year, but this has not hitherto been done in practice.

A complete collection of Board of Civil Commissioners' Regulations was published in 1894, and in the same year a collection of Ordinances passed during the years 1889 to 1893 (inclusive).

(*d*) The collections are accompanied by a table of contents, but not by an index. There is no table showing the effect on previous legislation.

(*e*) A collective edition of Regulations passed by the Board of Civil Commissioners from 1872 to 1889 (inclusive), and another of Ordinances passed by the Legislative Council from 1889 to 1893 (inclusive), were published in 1894 by the Government.

These editions comprise Orders in Council passed specially for Seychelles, but do not comprise those Acts of the United Kingdom which are in force in the dependency.

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(*f*) There is no edition of "Selected Statutes" corresponding to Chitty's "Statutes of Practical Utility."

(*g*) The mode of publication of private Ordinances is the same as for public Ordinances.

V.—Revision of Statutes.

No steps have been taken for the revision and expurgation of the Statute law, either periodically or otherwise. There exists no machinery for the purpose.

VI.—Indexing of Statute Law.

There is no general index of the Statute Law of the Dependency.

VII.—Consolidation and Codification.

(*a*), (*b*) There has been consolidation of the Regulations and Ordinances relating to the following subjects :—

The Civil Status Laws.
Laws relating to Auctioneers.
Laws relating to Prisons.
Quarantine Laws.
Laws relating to Vagrancy.

There has not been as yet any codification of any branches of the law.

(*c*) The *codes* in force are the Code Napoleon, the French Code of Civil Procedure, the French Code de Commerce, and the Mauritius Penal Code.

No revised codes embodying alterations made in such codes since their promulgation have been published.

VIII.—Subordinate Legislation.

The subordinate legislation consists of—

(*a*) Regulations framed by the Board of Health.

(*b*) Regulations or Orders made by the Administrator in Executive Council.

Regulations by the Board of Health are subject to approval by the Administrator, or modification by the Administrator in Executive Council. They must further be laid on the table of the Legislative Council, where they may be annulled or amended by resolution. If not objected to or amended after a certain number of sittings they become law, and are promulgated by publication in the *Gazette*.

Certain Regulations and Orders of the Administrator in Executive Council may be negatived or modified by the legislature.

The machinery for the preparation and passing of such measures varies according to the provisions of each Ordinance under which the power is exercised, but generally the rules are roughly prepared by the department concerned, and put into shape by the judge.

There is no collection of, or index to, such subordinate measures.

SOUTH AUSTRALIA.[1]

I.—Common Law.

(*a*) The common law of England on the 28th of December, 1836 (being the day on which this Colony was proclaimed to be a British province), then became, so far as applicable to the circumstances of the Colony, the common law of the Colony, and has so since remained, except so far as modified by the subsequent colonial legislation (Colonial Ord. No. 2 of 6 & 7 Vict. s. 1; Colonial Act No. 9 of 1872, s. 3). The province of South Australia is expressly exempted from laws enacted (before the 28th of December, 1836) in any other part of Australia (4 & 5 Will. IV. c. 95, s. 1). The Colony of South Australia was established on the 28th of December, 1836, under the provisions of the last-mentioned Act, the preamble to which recites that the territory within the specified boundaries consisted of "waste and unoccupied lands." There was no express authority introducing the common law of England at the date of the foundation of the Colony, but it has always been assumed that the colonists brought with them the law of England as it then was on the principles explained in Tarring's "Law relating to the Colonies," c. i. s. 1. This seems to be implied, though it is not stated in express terms, in the imperial and colonial enactments, to which reference has already been made, and in other Ordinances, such as No. 17 of 1846.

(*b*) There is not any law applying exclusively to particular races or creeds.

II.—Statute Law.

(*a*) The statutory or enacted law of the Colony consists—

(1) Of Ordinances or Acts of Council passed from the 28th of December, 1836, up to and inclusive of the year 1843, by

[1] Prepared by A. Buchanan, Esq., Master of the Supreme Court of South Australia; see also the replies to Questions III. and IV., prepared by E. G. Blackmore, Esq., Clerk to Parliaments, South Australia, printed at p. 289, below.

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a Council, consisting of the Governor and four official members, constituted under the authority of 4 & 5 Will. IV. c. 95, and 1 & 2 Vict. c. 60.

(2) Of Ordinances or Acts of Council passed from the year 1844 to the 21st of February, 1851, both inclusive, by a Legislative Council, consisting of the Governor, three official, and four non-official members, constituted under the authority of 5 & 6 Vict. c. 61.

(3) Of Ordinances or Acts of Council passed from the 3rd of October, 1851, to the year 1856, both inclusive, by the Governor and a Legislative Council of twenty-four members, eight nominated by the Crown and sixteen elected, constituted under Ordinance No. 1 of 1851, pursuant to power given by the Imperial Statute, 13 & 14 Vict. c. 59.

(4) Of Acts passed from 1857 inclusive down to the present day by the Parliament of South Australia, constituted under the Constitution Act No. 2 of 1855–56, which Act itself was authorized by the Act 13 & 14 Vict. c. 59, for the better government of Her Majesty's Australian colonies.

And the whole of it is embodied in such Ordinances and Acts, except that as regards many of the Acts the administrative machinery is contained in regulations and rules made under and in pursuance of powers contained in the same Acts.

(*b*) (i.) (A) The Statute Law of England, as on the 28th of December, 1836, extends to the Colony so far as it is applicable to the circumstances of the Colony, and has not been repealed or modified by subsequent colonial legislation (see *ante*, I. *a*).

(B) Of Imperial Acts and portions of Acts passed since the 28th of December, 1836, some extend by virtue of their express terms to—

1. South Australia alone, such as—

1 & 2 Vict. c 60.	To amend 4 & 5 Will. IV. c. 95.[1]
4 & 5 Vict. c. 13.	To advance £155,000.[2]
5 & 6 Vict. c. 61.	South Australian Government, etc.
28 & 29 Vict. c. 63, s. 7.	

(2) South Australia and certain other specified colonies, such as—

5 & 6 Vict. c. 36.	Sale of waste lands.
9 & 10 Vict. c. 104.	Sale of waste lands.
13 & 14 Vict. c. 59.	Government of Australian colonies.
18 & 19 Vict. c. 56.	Waste lands repeal.
24 & 25 Vict. c. 44.	Annexing territory.
25 & 26 Vict. c. 11.	Government of Australian colonies

[1] Both these Acts were repealed by 5 & 6 Vict. c. 61. [2] Repealed in 1861.

29 & 30 Vict. c. 74. Validating Acts.[1]
35 & 36 Vict. c. 19. Pacific islanders.
36 & 37 Vict. c. 22. Australian Duties Act, 1873.
48 & 49 Vict. c. 60. Federal Council.
56 & 57 Vict. c. 72. Colonial Acts confirmation.
58 & 59 Vict. c. 3. Colonial duties.
58 & 59 Vict. c. 44. Judicial committee.

(3) South Australia in common with all British dominions, such as—

6 & 7 Vict. c. 22. Unsworn testimony.
6 & 7 Vict. c. 38, ss. 8, 9, 10, 11. Processes, vice-admiralty.
7 & 8 Vict. c. 12. International copyright.
7 & 8 Vict. c. 49. Colonial post-offices.
7 & 8 Vict. c. 69. Judicial committee.
10 & 11 Vict. c. 85, s. 19. *London Gazette* evidence.
10 & 11 Vict. c. 95. Colonial copyright.
12 & 13 Vict. c. 66. Colonial post-offices.
12 & 13 Vict. c. 96. Admiralty offences.
14 & 15 Vict. c. 99, s. 11. Evidence.
15 & 16 Vict. c. 12. International copyright.
16 & 17 Vict. c. 48. Offences, coin.
16 & 17 Vict. c. 107, ss. 165, etc.[2] Customs consolidation.
19 & 20 Vict. c. 113. Foreign tribunals evidence.
22 Vict. c. 20. Evidence by commission.
22 & 23 Vict. c. 12, s. 2. Statutory declaration.
22 & 23 Vict. c. 63. British law ascertainment.
23 & 24 Vict. c. 122. Admiralty offences.
24 & 25 Vict. c. 11. Foreign law ascertainment.
26 & 27 Vict. c. 84. Colonial Acts confirmation.
27 & 28 Vict. c. 25. Naval prize.
28 & 29 Vict. c. 63. Colonial laws validation.
28 & 29 Vict. c. 64. Marriages in colonies.
28 & 29 Vict. c. 106. Dock loans.
28 & 29 Vict. c. 113. Governor's pensions.
31 & 32 Vict. c. 37. Documentary evidence.
33 & 34 Vict. c. 14, s. 16. Naturalization.
33 & 34 Vict. c. 52. Extradition.
33 & 34 Vict. c. 90. Foreign enlistment.
36 & 37 Vict. c. 60. Extradition amendment.
37 & 38 Vict. c. 27. Colonial Courts jurisdiction.
38 & 39 Vict. c. 22, ss. 8, 9. Evidence.

[1] Repealed *in toto* in 1894.

[2] Very much of this Act is repealed with special savings by 39 & 40 Vict. c. 36, s. 288.

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40 & 41 Vict. c. 59. Colonial Stock.
44 & 45 Vict. c. 58. Army.
44 & 45 Vict. c. 69. Fugitive offenders.
45 & 46 Vict. c. 9. Documentary evidence.
47 & 48 Vict. c. 24. Colonial attorneys.
47 & 48 Vict. c. 31. Colonial prisoners.
50 & 51 Vict. c. 54, s. 4. Courts.
52 & 53 Vict. c. 10. Commissioners for Oaths.
53 & 54 Vict. c. 25. Barracks.
53 & 54 Vict. c. 27. Courts of Admiralty.
53 & 54 Vict. c. 37. Foreign jurisdiction.
54 & 55 Vict. c. 31. Mail ships (conditional).
54 & 55 Vict. c. 43. Forged transfers (optional).
55 & 56 Vict. c. 35. Colonial stock.
56 & 57 Vict. c. 5. Regimental debts.
57 & 58 Vict. c. 39. Prize Courts.
57 & 58 Vict. c. 60. Merchant shipping.
58 & 59 Vict. c. 34. Boundaries.

So far as is known no complete list of such Statutes and parts of Statutes exists. To compile such a list would entail very great labour and much research, and the foregoing does not profess to be exhaustive.

(ii.) The following are some of the Statutes of the United Kingdom which operate in the Colony by virtue of some Order in Council, Charter, or Proclamation.

44 & 45 Vict. c. 69, Pt. II. Fugitive offenders, by Order in Council, August 23, 1883.[1]

57 & 58 Vict. c. 30, s. 20. Finance Act, 1894, by Order in Council, May 11, 1895.[2]

55 Vict. c. 92. Colonial Probates Act, 1892, by Order in Council, May 16, 1893.[3]

33 & 34 Vict. c. 10. Coinage Act, 1870, in part, by Order in Council, August 1, 1896.[4]

54 & 55 Vict. c. 72. Coinage Act, 1891, in part, by Order in Council, August 1, 1896.[4]

(iii.) Express adoption by the Legislature of the Colony of Statutes of the United Kingdom has been affected—

(A) By reference. The following are the principal instances unrepealed in which this course has been followed—

[1] Printed in "Statutory Rules and Orders Revised," vol. iii. p. 956.
[2] "Statutory Rules and Orders, 1895," p. 125.
[3] *Ibid.*, 1893, p. 3. [4] *Ibid.*, 1896, p. 13.

Pillory Abolition, 7 Will. IV., and 1 Vict. c. 23, adopted by 14 of 1842.

Wills, 7 Will. IV., and 1 Vict. c. 26, adopted by 16 of 1842.

Evidence, 6 & 7 Vict. c. 85, ss. 1 and 4, adopted by 17 of 1846.

Defamation and Libel, 6 & 7 Vict. c. 96, ss. 1, 2, 3, 9 and 10, adopted by 17 of 1846.

Dower, 3 & 4 Will. IV. c. 105, adopted by 25 of 1852.

(B) By re-enactment modified to suit local circumstances, but in great part practically in the same words. A large part of the colonial legislation not specifically local in character falls under this heading. Instances are—

Subject Matter.	Imperial Statute.	Colonial Act.
Frivolous Suits	3 & 4 Vict. c. 24	5 of 1843
Creditor's Remedies	1 & 2 Vict. c. 110	9 of 1845
Criminal Law	24 & 25 Vict. cc. 94–100	38 of 1876
Settled Estates	40 & 41 Vict. c. 18	182 of 1880
Matrimonial Causes	20 & 21 Vict. c. 85 22 & 23 Vict. c. 61	3 of 1867
Lands Clauses	8 & 9 Vict. c. 18	6 of 1847
Railways Clauses	8 & 9 Vict. c. 20	7 of 1847
Bills of Exchange	45 & 46 Vict. c. 61	312 of 1884
Married Women's Property ...	45 & 46 Vict. c. 75	300 of 1883–4
Sale of Goods	56 & 57 Vict. c. 71	630 of 1895
Lunacy Acts	16 & 17 Vict. c. 70	21 of 1864 19 of 1865–6
Arbitration	52 & 53 Vict. c. 49	510 of 1891
Partnership	53 & 54 Vict. c. 39	506 of 1891
Common Law Procedure	15 & 16 Vict. c. 76 17 & 18 Vict. c. 125 23 & 24 Vict. c. 126	30 of 1855–6 3 of 1862
Bankers' Books Evidence	42 & 43 Vict. c. 11	162 of 1879
Accidental Deaths	9 & 10 Vict. c. 93 27 & 28 Vict. c. 95	1 of 1865–6
Companies	25 & 26 Vict. c. 89	557 of 1892
Conspiracy and Protection of Property	38 & 39 Vict. c. 86	109 of 1878
Forfeitures for Treason and Felony	33 & 34 Vict. c. 23	25 of 1874
Sale of Foods and Drugs	38 & 39 Vict. c. 63 42 & 43 Vict. c. 30	257 of 1882 493 of 1890
Summary Convictions	11 & 12 Vict. c. 43	6 of 1850
Indictable Offences	11 & 12 Vict. c. 42	15 of 1849
Imprisonment for Debt	32 & 33 Vict. c. 62	466 of 1889
Guardianship of Infants	49 & 50 Vict. c. 27	400 of 1887
Lodgers' Goods Protection ...	34 & 35 Vict. c. 79	442 of 1888
Mercantile Law	19 & 20 Vict. c. 97	3 of 1861
Mortgages Charged on Land ...	17 & 18 Vict. c. 113	5 of 1865
Fusion of Law and Equity ...	36 & 37 Vict. c. 66 38 & 39 Vict. c. 77	116 of 1878
Trade Unions	34 & 35 Vict. c. 31	41 of 1876
Tramway Clauses	33 & 34 Vict. c. 78	309 of 1884
Trustees	56 & 57 Vict. c. 53	586 of 1893

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(*c*) No Statute law of any other colony is in force in this Colony. This is expressly enacted by 4 & 5 William IV. c. 95, s. 1.

(*d*) There is no code or other body of enacted law of non-British origin in force in the colony.

III.—Methods of Legislation.[1]

(*a*) The drafting of any important measure introduced by the Government is usually entrusted to some legal practitioner chosen either for his special knowledge of the law relating to the subject matter of the measure, or for his ability as a draftsman. The lawyer so selected takes his instructions from the Minister having charge of the Bill, and receives information and suggestions from the permanent officials of the department concerned. Measures are frequently drafted under the instructions of the responsible Minister by the officials by whom such measures will subsequently be administered.

There is no official draftsman. It is quite exceptional for a private member to receive any official assistance in drafting any measure which he desires to introduce.

(*b*) For full information on this head consult Blackmore's Law of the Constitution of South Australia, 1894, but as a concise reply:—

A Legislative Council of twenty-four members elected on a property franchise: and a House of Assembly of fifty-four members elected on *adult* suffrage.

The members of each house are paid £200 per annum.

The Constitution is contained in the Act No. 2 of 1855–6 as amended by Acts 5 of 1873, 236 of 1881, 278 of 1882, 450 of 1888, 613 of 1894.

Bills for appropriating any part of the revenue of the Province or for imposing, altering, or repealing any rate, tax duty or impost must originate in the House of Assembly. Act 2 of 1855–6, s. 1. (As to the compact entered into between the two Chambers with reference to the amendment by the Council of Money Bills, see Blackmore's "Practice of the Legislative Council," p. 182).

With the above exception, measures may be introduced in either House.

(*c*) Draft measures are not published before introduction.

(*d*) In the House in which it is introduced the stages a measure passes through are—

1. Leave to introduce.
2. First reading.
3. Second reading.
4. Committee.
5. Third reading.

[1] See further replies, *post.*, p. 289.

and in the other House—

1. First reading.
2. Second reading.
3. Committee.
4. Third reading.

When presented for the Governor's assent, the Governor may transmit by message to either House for its consideration any amendments he desires to be made in the Bill. This is under a provision in Act 2 of 1855–6, and has been found on several occasions of great advantage.

The final stages of a measure are assent by the Governor, or if reserved by him, the Queen's assent.

(*e*) No; but the draftsman generally sees prints of the Bill at the various stages, and suggests alterations consequent upon amendments.

(*f*) No such steps have been taken beyond Act 1 of 1843, re-enacted and extended by the Language of Acts Act, No. 9 of 1872.

(*g*) There is an annual session. There is no fixed period, but the session usually extends from the beginning of June until within a few days of Christmas.

(*h*) From 1837–1844 inclusive, the Ordinances are numbered in a series 1, 2, 3, etc., by reference to each regnal year.

From 1845–1874 inclusive, the Ordinances or Acts are numbered in a like series 1, 2, 3, etc., for each calendar year under the authority of a Joint Standing Order (Blackmore, "Prac. Leg. Co.," p. 154).

From 1875 inclusive to the present time the public Acts are numbered in Arabic figures in one continuous arithmetical series, commencing with No. 1. Both the regnal and the calendar years are printed at the commencement of each Act.

It is the practice now to confer a short title on every important Act for convenience of citation. Occasional instances of short titles being conferred occur as far back as 1847, and about ten years later the practice may be said to have become general as regards important Acts.

(*i*) Yes. The procedure on private Bills is based upon and is practically identical with that of the House of Commons. Private Bills are those—

(1) Whose primary object is to promote the interests of individual persons or corporations rather than those of the community at large; or

(2) Which authorize the taking compulsorily or prejudicially affecting, by individual persons or corporations, of lands other than Crown lands; or

(3) Which authorize the granting of specific Crown lands to an individual person, corporation, or local authority.

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Bills coming within the last two categories (2 & 3) if introduced by the Government are not treated as private Bills, but must after the second reading be referred to a select committee of that House in which they originate.

Up to the end of 1851 private Acts were numbered amongst the public Acts in the order in which they became law. Since that time they have not received numbers, and are for convenience grouped at the end of each year in the official volumes of Acts published.

(*j*) No such practice exists, but the Minister or member in charge of a Bill usually gives an explanation of its object and scope on moving for leave to introduce the measure.

IV.—Publications of Statutes.[1]

(*a*) Under the Standing Orders of the respective Chambers, four copies of every Bill when it has finally passed both Houses are duly certified and verified by the President or Speaker and the clerk or other proper officer of the House in which it originated, and are presented to the Governor.

The Governor affixes his assent to all the copies, and returns one copy to each House to be placed with the records thereof, enrols one copy in the Supreme Court (Rules and Regulations for Her Majesty's Colonial Service, r. 181), and transmits one copy to the Secretary of State for the Colonies (5 & 6 Vict. c. 76, s. 32).

In practice, two extra copies are presented to the Governor, one of which is retained in his office and the other sent as a duplicate to the Secretary of State for the Colonies.

The certificate of the clerk or other proper officer of either House to the effect that the document to which it is attached is a true copy of any Colonial law assented to by the Governor is *primâ facie* evidence of the truth of the copy, and that the law has been properly and duly passed and assented to (28 & 29 Vict. c. 63, s. 6).

Acts purporting to be printed "by authority by the Government printer" are never questioned.

(*b*) Both public and private Acts are printed separately by the Government printer "By authority," in demy quarto, in pica type, and are sold to the public at a uniform price of one shilling each. Occasionally an Act is printed also in demy 8vo size, in long primer type, for distribution or for use in Government Departments.

Acts are printed by the authority of the Government.

(*c*) The separately printed public and private Acts are collected into volumes at the end of each session and sold at the price of a shilling for each Act in the volume.

[1] See further replies, *post*, p. 289.

(*d*) The periodical volumes are accompanied by—

(1) An index of the Acts in alphabetical order of the subject matter. This has been given since 1879; and

(2) A table of contents setting out the titles of the Acts in their numerical order. This has always been given.

(*e*) No collective editions have ever been published.

(*f*) About 1868 the Government caused a selection of four volumes of Acts of public importance to be bound up in alphabetical order of subject matter for the use of legislators and public officers. It is long since out of date, and no similar selection has since been attempted.

(*g*) Private Acts are published in the same manner as public Acts.

V.—Revision of Statutes.

(*a*) No steps have been taken for the revision and expurgation of the Statute law.

(*b*) There is no edition of the Revised Statutes showing those actually in force.

VI.—Indexing of Statute Law.

There is a general index to the Statute law of South Australia up to the close of the session 1893, compiled by Messrs. Castle and Thomas of the Crown Solicitor's Office and published by the Government. It is arranged alphabetically according to the subject matter, gives the number of Act and year, has a column in which to indicate whether an Act is spent, expired, repealed, or amended, and a column for a short synopsis of the enactment, as, for instance—

	No.	Year.		
Aborigines' Evidence	8	1844	Repealed 3 of 1848	Allows aborigines to give evidence without oath.

It includes public Acts only, but a schedule of private Acts in alphabetical order is appended. It does not include Statutes of the United Kingdom which are in force in the Colony. It embodies, as shown above, the information as to how each Statute has been dealt with. It was published in 1894.

Similar indices had from time to time been prepared by the officers of the Legislature, the latest being that to the close of the session 1886, prepared by Mr. G. W. D. Beresford and published by the Government in 1888.

There was also published by the Government in 1887, an alphabetical

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index, compiled by Mr. Beresford, of the public Acts which were in force or partly in force at the end of 1886.

In 1885 Dr. J. Walter Smith and Mr. A. Young published a small index to the public Acts in force in South Australia, together with a chronological table of all the Acts passed from the foundation of the Colony down to 1885. The earlier indices are (*a*) an Index and Chronological Table to end of 1867 (published in 1868), to which is appended (1) A Table of the Acts of the Imperial Parliament adopted in South Australia; (2) A Table of the Imperial Statutes passed specially for the Australian Colonies and affecting South Australia, (*b*) an Index and Chronological Table to 1874, published in 1876, (*c*) the like Index and Table to 1878, published in 1879.

VII.—Consolidation and Codification.

(*a*) No steps have been taken to consolidate the whole Statute law.

Particular parts of the Statute law have from time to time been consolidated when the amending Acts had become so numerous as to be difficult or inconvenient to interpret or consult. Instances are—

Insolvent Act, 385 of 1886.
Real Property Act, 380 of 1886.
Local Court Act, 386 of 1886.
Companies Act, 557 of 1892.
Municipal Corporations Act, 497 of 1890.
District Councils Act, 419 of 1887.
Administration and Probate Act, 537 of 1891.
Crown Lands Consolidation Acts, 86 of 1877; 393 of 1886; 444 of 1888.
Fencing Act, 559 of 1892.
Licensed Victuallers Act, 191 of 1880.
Post Office Act, 49 of 1876.
Roads Act, 314 of 1884.
Scab Act, 19 of 1858.
Waterworks Act, 269 of 1882.
Weights and Measures Act, 349 of 1885.
Defences Act, 643 of 1895.

The codification of several branches of the Law by Imperial Statute has been copied here by Colonial Statute, *e.g.*—

Bill of Exchange Act, 312 of 1884.
Sale of Goods Act, 360 of 1895.
Arbitration Act, 510 of 1891.
Partnership Act, 506 of 1891.
Criminal Law Consolidation Act, 38 of 1876.

(*b*) No machinery exists for this purpose, nor is the work now in progress.

(*c*) No codes are in force in the Colony, except so far as such Acts, copied from Imperial Statutes, as are lastly above referred to can be considered as codes.

VIII.—Subordinate Legislation.

Except the Bye-laws Enabling Act, No. 425 of 1888, which authorizes the making and publication of model bye-laws and the adoption by public bodies of such model bye-laws by reference, no special official or other machinery exists for the preparation, passing, or promulgation of measures of subordinate legislation.

Rules or orders made by the Governor or a minister or department, under the express authority of a Statute, must of course comply with the particular Statute as to the making, approving, confirming, publishing, and laying before Parliament, the requirements in these respects in the different Acts not being uniform. Generally the requirements are confirmation by the Governor, publication in the Government *Gazette*, and laying before Parliament a specified number of days.

Sometimes a legal practitioner is employed to draft the rules under an Act. Sometimes the law officers prepare them. Frequently they are prepared by the officials of the department chiefly concerned, and perused by the law officers.

There is no collection of, or index to, such subordinate measures.

SOUTH AUSTRALIA.[1]

III. Methods of Legislation.

(*a*) Drafts of legislative measures are prepared.

(1) By the Attorney-General.

(2) By some member of the legal profession specially selected for a particular Bill.

(3) By some competent official, though not a member of the legal profession, who has special knowledge, *e.g.* the clerk of the Parliaments, the principal Returning Officer of the Province, the Military Commandant; and Bills of Supply and Appropriation by the Clerk of Assembly.

(4) Public bills introduced by private members are drafted by themselves or by whom they appoint.

There is no official draftsman.

[1] These further replies under headings III. and IV. are prepared by E. G. Blackmore, Esq., Clerk to Parliaments, South Australia.

SOUTH AUSTRALIA.

(*b*) As to the Constitution of the Legislature of South Australia, *vide* Blackmore's "Law of the Constitution of South Australia," published by authority, Adelaide, 1894.

Bills of Appropriation and Taxation must originate in the House of Assembly. Any other Bills may be introduced in either House.

(*c*) Draft measures are not published before introduction, but in the case of certain Bills regulating State Institutions governed by a Council (*e.g.* State children), advance prints would be submitted for criticism and revision.

(*d*) A Bill may be founded and introduced upon resolutions in Committee (*e.g.* Money Bills), or upon direct motion in the House for leave.

Bills are read three times, the final stage being the question that the Bill do pass. After the second reading they are committed and reported, and the report adopted given to the third reading. After committal once a bill may be recommitted as often as is thought desirable before the report is finally adopted. A Bill must pass through both Houses.

It is then presented to the Governor for assent, who may assent, or reserve, or return the Bill to the House in which it originated, suggesting an amendment. A Governor's amendment may be agreed to, or agreed to in the amendments, or disagreed to. The amendments cannot be finally adopted except by consent of both Houses, each of which considers the Governor's amendments.

(*e*) If a Bill is amended to any great extent in Committee, it is customary to refer it to the draftsman to report if any and what amendments are necessary consequent on those made in Committee.

(*f*) *Vide* Language of Acts Act, No. 9 of 1872 (Blackmore, "Law of the Constitution").

(*g*) Parliament must meet annually. By custom the Thursday next or next but one after the 31st of May is the usual date. There is no fixed limit, but custom has fixed the expiry of session before Christmas Day.

(*h*) By joint standing order every public Act of the Legislature, commencing No. 1 from the 1st of January, 1875, is numbered in Arabic figures, and in regular arithmetical series in the order in which the same are assented to or reserved by the Governor.

In most cases each Bill contains a "Short Title" clause.

(*i*) Private Bills are governed by special standing orders common to both Houses, those of the House of Commons having been adopted so far as practicable (see Standing Orders—Private Bills).

(*j*) No. But in cases of Bills dealing with Crown Lands or Railway

Bills, maps and plans are occasionally exhibited in the library or on the walls of the Chamber.

IV.—Publication of Statutes.

(*a*) The Governor assents to or reserves Acts, either in person before both Houses or by notifying the same by message to each House, in which latter cases the assent or reserve is notified in the *Gazette*.

As to proof of Acts, see 28 & 29 Vict. c. 63, s. 6 (Blackmore, "Law of the Constitution," p. 63).

(*b*) Statutes are printed for publication by the Government printer under authority of the Chief Secretary. The clerk of the Parliaments supplies the Government printer with a record copy of the Act as assented to from which to print for publication.

(*c*) The Statutes of each session are published in a collected form, for Members of Parliament, for the Offices of the Legislature, and for Government Departments.

(*d*) They are accompanied by—

(1) An index setting forth title and date of assent or reservation.

(2) But not by a table showing the effect on previous legislation.

(*e*) No collective edition of the Statutes has been published.[1]

(*f*) See above, p. 287.

(*g*) Private Acts when passed are published similarly as public Acts, and are bound up in the volume of Acts of the Session, but not numbered. They are placed at the end of the public Acts.

TRINIDAD AND TOBAGO.[2]

The islands of Trinidad and Tobago were under separate Governments until the Order in Council of the 17th of November, 1888,[3] made by virtue of the Imperial Act (50 & 51 Vict. c. 44).

No materials are available in Trinidad for the purpose of giving the details of legislation in Tobago prior to 1888. Since that date the two islands constitute one Colony.

I.—Common Law.

(*a*) The common law of England is the common law of the united Colony.

[1] Acts of the Imperial Parliament relative to South Australia will be found in Blackmore's "Law of the Constitution of South Australia."

[2] Prepared by Louis Wharton, Esq., Barrister-in-Law, Port of Spain.

[3] Printed in "Statutory Rules and Orders Revised," vol. viii. p. 7.

TRINIDAD AND TOBAGO.

The island of Trinidad capitulated to the land and sea forces of the British king on the 18th of February, 1797, and was ceded in perpetuity to the British Empire by the General Peace of 1814.

In frequent complaints of the English settlers and native-born subjects of the British Government it was urged that all the Spanish laws in force before the conquest, and which had not since been repealed by the King of England, were still in force in the island, although in Spain many injurious old laws had been repealed since the conquest, and that the Spanish laws of succession and minority operated as a hardship on the colonists. British merchants also complained of the difference in the law affecting trade and commerce.

This led to the appointment of commissioners of legal inquiry by a Royal Warrant, dated the 29th of November, 1823.

In their report the Commissioners recommended—

(*a*) The removal of the restrictions on the free disposition of property by will;

(*b*) The taking away of the right of the wife to a partnership in the property acquired during marriage by onerous title;

(*c*) That the age of majority should be fixed at twenty-one, and not at twenty-five;

(*d*) The introduction of the English mode of trial in criminal cases;

(*e*) The gradual introduction of such parts of the law of England as were better adapted to the then state of society in the Colony than the Spanish law; and

(*f*) The constitution of a Council, so as to secure to all classes of the inhabitants control over the expenditure.

By Royal instructions of the 25th of April, 1831, and by his commission, the Governor was empowered to appoint a Council of Government, and full power and authority were given him, with the advice and consent of the said Council of Government, to make laws for the order and peace and good government of the Island.

Ordinances were accordingly introduced giving effect to these recommendations, and by these Ordinances fragments of the English common law, as then amended by Statute, relating to civil rights, and to offences against the person and against property, were from time to time introduced. Eventually, by the Ordinance 11 of 1844, s. 15, every offence which, if done or committed in England, would amount to a felony or misdemeanour at common law, was, if done or committed in Trinidad, to be taken to be a felony or misdemeanour, as the case might be; and, by a later Ordinance, 4 of 1848, s. 3, the law of Spain relating to actions, rights of action, forms of action, and the procedure in the same, was repealed, and the English common law, as then

modified by Statute in respect thereto, introduced in its stead, but the Spanish law originally in force in Trinidad still governs—

(1) The construction of deeds made before the 10th of June, 1844.
(2) The institution of heir in cases of birth before the 12th of March, 1846.
(3) Disposition of property by will made before the 10th of June, 1844.
(4) Form of wills made before the 13th of January, 1845.
(5) Intestacy and succession to person before the 12th of March, 1846.
(6) Right of a person born out of lawful wedlock before the 12th of March, 1846, to take as next of kin of mother, or of mother to take as next of kin.

(*b*) Certain Ordinances relate to the introduction, control, care, marriage, and divorce of immigrants recruited from the British possessions in India by the local Government under contract or indenture to work on the estates in Trinidad, and to the apprenticeship of the children of such immigrants.

There is no law applying exclusively to any particular creed.

II.—Statute Law.

(*a*) The statutory law of the Colony consists of—

(1) Letters Patent.
(2) Regulations made by virtue of such letters.
(3) Royal Orders in Council.
(4) Proclamations of the Governor.
(5) Ordinances.
(6) Acts of the Imperial Parliament.

Prior to the year 1832, local laws were made by the authority of the King in Council or by proclamation of the Governor for the time being, by virtue of powers incident to his office.

From that date legislation has been by Ordinances made by the Governor, with the advice and consent of the Council of Government or Legislative Council, in virtue of the authority of the Royal Commission to the Governor of the 25th of April, 1831.

All Ordinances are subject to disallowance by Her Majesty on the recommendation of one of the principal Secretaries of State.

The Statute law is *not* embodied in any Imperial charter.

Rules and regulations are made by virtue of Letters Patent or other instructions under the Royal Sign Manual for the guidance of the Governor and Legislative Council.

TRINIDAD AND TOBAGO.

No other regulations are in force in the Colony except such as are made by virtue of Ordinances or Orders in Council.

Orders in Council were not, after 1831, the usual method of legislation for domestic or municipal purposes.

Some few of those made since then still remain in force. They deal principally with the relations between master and servant, the prevention of usury, the imposition of legacy and succession duty, the authorizing of legislation otherwise forbidden without leave of the Sovereign, such as the naturalization of aliens, or for enabling aliens to hold immoveable property before their naturalization.

By Orders in Council of the 20th of June, 1831, the 13th of June, 1853, the 24th of March, 1871, and the 26th of June, 1873, the mode of procedure in appeals from local courts to the Judicial Committee of the Privy Council is regulated; and by the Order in Council of the 17th of November, 1888, the union of the Colonies of Trinidad and Tobago was effected. By Order in Council of the 27th of June, 1894, the Colonial Probate Act was made applicable to the Colony, and by Order in Council of the 13th of August, 1895, s. 20 of the (Imperial) Finance Act, 1894, was also applied.[1]

Orders in Council are now chiefly used as a method of legislation in extending to and declaring and promulgating within the Colony the provisions of Imperial Acts dealing with the relations of Great Britain with foreign powers in matters of trade and commerce; of the postal service; extradition; desertion from foreign ships; the coasting-trade by foreign ships, and like matters of international comity and concern.

By their means, also, the provisions of treaties and conventions with foreign powers, are promulgated within and made applicable to the Colony.

The Acts of Parliament expressly made to relate to the Colony are few in number, and relate especially to the establishing of the Judicial Committee of the Privy Council as a Court of Appeal, the abolition of slavery, navigation, piracy, the union of Trinidad and Tobago, Colonial Courts of Admiralty, etc., and are specified in the tables in Tarring's "Law relating to the Colonies."

(*b*) The Statutes of the United Kingdom operate in the Colony by virtue of Ordinances. In this way has been introduced the English Statute Law relating to—

1. The law of Evidence, as amended by Statute (Ordinance No. 12 of 1855).
2. The law as to Bills of Exchange and Promissory Notes, as amended by Statute 9 of 1836 (*now repealed*).

[1] The earlier Orders are printed in the Statutory Rules and Orders Revised, and those of 1894 and 1895 in the Statutory Rules and Orders for those years.

3. The Habeas Corpus Act, by Ordinances No. 12 of 1833 and No. 11 of 1841.
4. Offences against the person, by Ordinance 10 of 1842.
5. Larceny and other offences, by Ordinance 11 of 1842.
6. The coin, by Ordinance 14 of 1842.
7. Wills, by Ordinance 1 of 1844.
8. Frauds, by Ordinance 5 of 1844.
9. Trial by Jury, by Ordinance 11 of 1844.
10. Inheritance, by Ordinance 22 of 1845.

The existing practice is to reproduce, as though it were the original act of the local legislature, the more important English Statutes, with such variations as circumstances require, without any reference to the parent English Act, but only with a preamble declaring the expediency of amending or consolidating the law relating to the given subject.

Among such Ordinances are the Summary Convictions Ordinance of 1868, the Companies Ordinance, 1869, the Bankruptcy Ordinance, 1871, the Conveyancing and Law of Property Ordinance, 1884, the Married Women's Property Ordinance, 1884, the Bills of Sale Ordinance, 1884, the Bills of Exchange Ordinance, 1884, and the Sale of Goods Ordinance, 1896.

(*c*) The Statute law of no other Colony is in force in the Colony.

(*d*) No code or other body of enacted law of non-British origin is in force in the Colony.

III.—Methods of Legislation.

(*a*) The drafts of legislative measures are prepared by the Attorney-General, who is the official draftsman, and is appointed by and responsible to the Crown. His duties do not extend to measures introduced by non-official members of the Legislative Body.

(*b*) The Legislative Chamber, through which measures have to pass, is the Legislative Council, consisting of the Governor, the Colonial Secretary, the Attorney-General, Solicitor-General, Auditor-General, Director of Public Works, Protector of Immigrants, Receiver-General, and Surgeon-General of Trinidad, and the Commissioner of Tobago, who are called the Official Members of the Legislative Council, and of nine other persons appointed under the Public Seal of the Colony and called Unofficial Members of Council.

Measures, however, must be submitted to and be approved by the Executive Council before being submitted to the Legislative Council.

(*c*) Draft measures are not published before their introduction or at any other stage.

TRINIDAD AND TOBAGO.

(*d*) A measure is read a first and second time, is then brought into committee of the whole Council, or referred to a Select Committee, is read a third time, is passed and receives the assent of the Governor before it becomes law.

(*e*) There is no opportunity for referring measures, whilst in passage through the Legislature, to any special officer or committee on points of form.

(*f*) Uniformity of language, etc., are secured by the Ordinance 16 of 1874, which is a reproduction of Brougham's Act (13 & 14 Vict. c. 21).

(*g*) There is no annual session of the Legislature. By the Standing Rules and Orders the first Monday in every month, except January, is fixed as a day of session.

(*h*) It is now the settled practice to confer a short title on each Ordinance. "The Companies Ordinance, 1896," a substantial reproduction of "The Companies Act, 1862," is the first Ordinance which had a statutory short title; since then short titles have gradually come into use. The Ordinances of the Colony are numbered by reference to the Calendar year.

(*i*) Private bills are not treated separately from public bills. They must be brought in upon petition by their promoters, and the payment of fees during their progress is indispensable.

The principle recognized in May's "Parliamentary Practice" is that on which the line is drawn between private and public bills.

There is no distinction made in the numbering between private and public Ordinances.

(*j*) There is no practice existing of accompanying a measure on its introduction by an explanatory memorandum. Some Attorneys-General have done so, others have not. Every measure passed by the Legislative Council is forwarded with such a memorandum to the Secretary of State for the Colonies.

IV.—Publication of Statutes.

(*a*) The Ordinances of the Colony are promulgated by publication in the Government *Gazette* under the authority of the Governor.

The production of the copy of an Ordinance, printed by the Government printer, is accepted as evidence of its having been duly passed.

(*b*) Ordinances are printed for publication in 8vo form by the Government printer under the authority of the Governor.

(*c*) The Standing Rules of the Legislative Council require that in the month of January, or as soon as possible thereafter, the Governor shall

cause a complete collection of all Ordinances enacted during the preceding year to be published for general information.

(*d*) 1. The periodical volumes of statutes are not accompanied by an index, but contain a table of contents giving the Ordinances in numerical sequence.

2. There is no table showing their effect on previous legislation.

(*e*) A revised edition of the laws of Trinidad in five volumes, comprising all the Ordinances passed between the years 1832 and 1882, was compiled under the supervision of the Attorney-General of the Colony and published by the Government in 1884.

There is no periodical edition of the Ordinances.

The above edition does not comprise Acts of the United Kingdom in force in the Colony.

(*f*) There is no edition corresponding to Chitty's Statutes.

(*g*) Private Acts are published together with, and in the same way as, public Acts.

V.—Revision of Statutes.

(*a*) A Commission, appointed in 1849 by the Governor, made certain recommendations as to the amending, revising and expurgating of the Ordinances passed since 1832; and, in consequence of their report, a revised edition of the laws was published. The revised edition referred to under IV. (*e*) is a revised and expurgated edition of the Statute law.

In 1881 the Law Revision Ordinance repealed all the Orders in Council which had ceased to be in force. There is no machinery existing for the purpose of Statute law revision.

(*b*) The Revised edition referred to at IV. (*e*) shows the Statutes actually in force. It is the latest edition. Its contents are arranged chronologically.

VI.—Indexing of Statute Law.

There are three general indexes to the Statutes. All have been prepared by private enterprise, are arranged alphabetically. None has been revised, nor is there any provision for their revision. All include public and private Ordinances, but do not include Statutes of the United Kingdom which are in force in the Colony. They are not accompanied by any tables showing how each Ordinance has been dealt with. One was published in 1871, another in 1888, and a third in 1892.

There is a chronological table of the Imperial Orders in Council and Orders promulgated between 1831 and 1887.

TRINIDAD AND TOBAGO.

This table was published by the Government in 1877, and shows what Orders and Ordinances

(1) were in force;

(2) had ceased to be in force by express repeal;

(3) had effected their object, and had no further operation;

(4) had expired.

VII.—Consolidation and Codification.

(*a*) No steps have been taken to consolidate the whole or particular parts of the Statute law, or to codify any branches of the law; but there is a growing tendency to re-enact the law as codified in England. Examples of this are—

The Bills of Exchange Ordinance, 1884.

The Sale of Goods Ordinance, 1896.

(*b*) There is no machinery for this purpose. The work depends entirely upon the Attorney-General, who sometimes is required by the Colonial Office to introduce particular measures.

(*c*) There is no code in force in the Colony.

VIII.—Subordinate Legislation.

There is no official or other machinery for the preparation or passing of measures of subordinate legislation.

Rules and Orders made by the Governor or a department are prepared either by the Attorney-General, or some other executive officer, or by the head of the department subject to the approval of the Governor.

In matters affecting practice and procedure in the Courts, rules and orders are made by the Chief Justice with the concurrence of the Puisne Judges.

There is no index to such subordinate measures.

THE INDIAN STATUTE BOOK.

[*By the Hon. M. D. Chalmers, Law Member of the Council of the Governor-General of India.*]

THE Indian Statute book is a very complex one. It is composed of ten different classes of enactments, which may be grouped as follows :—

English legislation	I. Acts of Parliament. II. Orders in Council, made by Her Majesty in Council.
Indian legislation	III. The old Bengal, Madras, and Bombay Regulations. IV. Acts of the Governor-General in Council. V. Regulations under 33 Vict. c. 3. VI. Ordinances made by the Governor-General. VII. Acts of Local Councils.
Derivative legislation in India.	VIII. Statutory rules, etc., made in India under the authority of English legislation. IX. Statutory rules, orders, regulations, bye-laws, and notifications made under the authority of Indian legislation. X. Rules, laws, and regulations, made by the Governor-General or Governor-General in Council for non-regulation provinces prior to 1861, which were confirmed by s. 25 of the Indian Councils Act, 1861.

I. The Acts of Parliament which apply to India may be divided into three classes—(*a*) Acts applying in terms to India, (*b*) Acts applying in terms or by necessary implication to the whole of the Queen's dominions, and (*c*) Acts applying only to the Presidency-towns, which for certain limited purposes are regarded as British Settlements.[1]

[1] As to British Settlements, see Anson's "Law and Custom of the Constitution," Part II. p. 259; and *Mayor of Lyons* v. *East India Co.* (1836), 1 Moore; Ind. App. 176.

(*a*) But little comment is required on the Acts which in terms apply to India, such, for example, as the Government of India Act, 1858 (21 & 22 Vict. c. 106), or the Indian High Courts Act, 1861 (24 & 25 Vict. c. 104). Their territorial operation is of course confined to British India. But it may be noted that for certain limited purposes Parliament has occasionally legislated for the subjects of Native States under the suzerainty of Her Majesty. See, for instance, s. 1 of the Slave Trade Act, 1876 (39 & 40 Vict. c. 46), and s. 15 of the Foreign Jurisdiction Act, 1890 (53 & 54 Vict. c. 38). It has also empowered the Indian Legislature to legislate for British subjects outside British India.[1]

(*b*) An Act of Parliament which in terms applies to the whole of the Queen's dominions naturally applies to British India as a part of those dominions. For instance, the provisions of the Territorial Waters Jurisdiction Act, 1878 (41 & 42 Vict. c. 73), clearly apply to the territorial waters of British India, but a curious question might arise as to how far they apply to the territorial waters of a Native State. Then there may be Acts of Parliament which as a question of construction operate throughout Her Majesty's dominions or bind her subjects everywhere. For example, certain of the provisions of the Merchant Shipping Act, 1894 (57 & 58 Vict. c. 60), apply in terms to the whole of Her Majesty's dominions, while others appear to do so as a matter of construction. So again the provisions of the Offences against the Person Act, 1861 (24 & 25 Vict. c. 100), ss. 9 and 10, relating to the trial in England of British subjects for murder and manslaughter committed abroad, apply to British subjects everywhere. The canon of construction for determining the extra-territorial operation of Acts of Parliament is stated in *R.* v. *Jameson* (1896), 65 L. J. M. C. 218, at p. 224; L. R. [1896], 2 Q. B. 425, 430. The defendant in that case was prosecuted under the Foreign Enlistment Act, 1870 (33 & 34 Vict. c. 90), for preparing in Bechuanaland a military expedition against a friendly state. Lord Russell, in giving the judgment of the Court, says—"It may be said generally that the area within which a statute is to operate, and the persons against whom it is to operate, are matters of construction upon the statute itself. The object of construction is to arrive at what the Legislature meant by the language they have used in the enactment. But there may be suggested some general rules—for instance, if there be nothing which points to a contrary intention, a statute will *primâ facie* be taken to apply only to the United Kingdom. Where, as here, it is applicable to the Queen's dominions, it will be taken to apply to all persons in the Queen's dominions, including those who owe temporary allegiance—foreigners

[1] See below, p. 305.

living in the country during their residence there—and according to its context a statute may be taken to apply to the Queen's subjects everywhere. Another general canon of construction is this—that if any construction otherwise be possible, an Act is not to be construed as applying to foreigners in respect of acts done by them outside the dominions of the sovereign power enacting. That is a rule based upon international law, by which the sovereign power is bound to respect the exclusive jurisdiction in its own territory of every other sovereign power, and not to attempt to legislate for any portion of that territory."

(*c*) As regards the Presidency-towns and Rangoon, a distinction must be drawn between Acts of Parliament passed before, and Acts of Parliament passed after, the grant of the Charter of 1726.

As regards Acts passed after 1726 the position seems clear. They have no application to the Presidency-towns, or to any other part of British India, unless in express terms or by necessary implication they apply or extend to British India or the whole of the Queen's dominions. Such Acts, therefore, come within classes (*a*) and (*b*) mentioned above. (See Preface to Whitley Stokes' "Collection of Statutes relating to India," p. 11, and *Edwards* v. *Ronald* (1830), 1 Knapp P. C. 259.)

As regards Acts of Parliament passed prior to 1726 the position is very obscure. The effect of the Charter was to introduce English law into the Presidency-towns in an indefinite manner and to an indefinite extent. It is by no means clear whether it was introduced as a territorial law, or as a personal law applying only to European British subjects, but it is clear that only such statutes were imported as, on judicial interpretation, might be held applicable to the circumstances of India. Where any particular statute has come before the courts, they have generally held it to be inapplicable. See Preface to Whitley Stokes' "Collection of Statutes relating to India," pp. vii. and xiii., where the authorities are collected and the question is discussed at length. As the result of the authorities and his own investigations, Mr. Stokes, in his collection published in 1881, prints thirty-five statutes as being actually or possibly applicable to the Presidency-towns and Rangoon, where the Recorder determines cases in which the parties are not Hindus, Mahommedans, or Buddhists in accordance with "the law administered by the High Court at Fort William in the exercise of its ordinary original civil jurisdiction" (see the Burma Courts Act, 1872 (VII. of 1872), s. 7).

As regards these thirty-five statutes, it is to be noted that some of them have, since 1881, been repealed or amended in England, and that several more of them appear to be superseded by subsequent Indian legislation.

Finally, it may be noted that certain English statutes subsequent to

1726 have been expressly applied to India by Indian legislation. For example, Act XXIV. of 1841 applies "to the territories of the East India Company, as far as applicable to the same," the 11 Geo. IV. & 1 Will. IV. c. 46, and the 11 Geo. IV. & 1 Will. IV. c. 35. But in such case a statute so applied is not in force in India *proprio vigore*. It is simply an instance of Indian legislation by reference, and it stands on the same footing as an application of certain articles of the French Civil Code, or any other foreign law. It owes its validity in India to the Indian, and not to the English, legislation.

Orders in Council.

II. Colonies acquired by conquest or cession are subject to the legislative powers of the Crown expressed by Orders in Council (see Anson's "Law of the Constitution," Part II., p. 252); but India is not on the footing of a Crown Colony, and probably the only Orders in Council in force in India are Orders made under the authority of Acts of Parliament. See, *e.g.*, the Orders in Council confirming the Extradition (India) Act, 1895 (IX. of 1895), published in the *Gazette of India*, 1896, Part I., p. 87, and the Order in Council of the 7th of July, 1897, giving an appeal from Zanzibar to the Bombay High Court. (Statutory Rules and Orders, 1897, No. 576.)

Such Orders differ only from other statutory rules in that they are made by Her Majesty in Council, and not by a subordinate rule-making authority.

Regulations of the Bengal, Madras, and Bombay codes.

III. The earliest extant Indian legislation consists of what are usually referred to as the Regulations of the Bengal, Madras, and Bombay Codes.

1. The oldest of these Regulations are those of the Bengal Code, which were passed from 1793 to 1834 inclusive, and numbered in all 675, but are now reduced to only 89 wholly or partly in force. Legislative power was first expressly conferred by Parliament upon the Governor-General in Council by the East India Company Act, 1772 (13 Geo. III. c. 63), commonly known as "the Regulating Act," and by the East India Company Act, 1780 (20 Geo. III. c. 70); but the terms of those statutes were so narrow and precise that there can be no doubt but that the Regulations passed in pursuance of them often exceeded the authority granted. However that may be, a large number of Regulations were made prior to 1793, and in that year they were collected and passed by Lord Cornwallis in the shape of a revised Code, the Regulations contained in which date from that year and have been regarded as superseding and repealing all the Regulations passed before that year. (See the preambles to Regulations VIII., IX., X., etc., of 1793. Four years later the East India Act, 1797 (37 Geo. III. c. 142), gave Parliamentary recognition to the full power to legislate which had in the meantime been assumed.

2. A legislature having been thus duly constituted in Bengal, it became necessary to establish similar authorities in the other Presidencies. Accordingly, by the Government of India Act, 1800 (39 & 40 Geo. III., c. 79), the Governor and Council of Fort St. George at Madras were invested, within the territories subject to their Government, with the same legislative power as had previously, by the Statute of 1781, been conferred upon the Governor-General and Council of Fort William. Again in 1807 the 47 Geo. III., Sess. 2, c. 68, was passed for, *inter alia*, "the better Government of the settlements of Fort St. George and Bombay." It recited the expediency of granting to the two local Governors in Council the same powers of government as were vested in the Governor-General and Councils of the Presidency of Fort William, and proceeded to empower them to make, frame, and issue such rules and regulations for the good order and civil government of the towns of Madras and Bombay and the Company's settlements and factories there, "and to add the necessary sanctions thereto as the Governor-General in Council might make for the good order and civil government of Fort William." The Governor in Council at Bombay was at the same time empowered to frame regulations for the Provincial Courts and Councils within his territories and provinces "in like manner and subject to all the regulations, provisions, and confirmations touching the same as the Governor-General and Council at Fort William were, by any Act then in force, authorized and empowered to do for the better administration of Justice among the native inhabitants and others being within the Provinces of Bengal, Behar, and Orissa." As these statutes were later than the Statute of 1797, it would seem that they conferred on the local Governors legislative powers, not as defined by the statutes of 1773 and 1781, but as recognized and confirmed by the Statute of 1897. In this way 251 Regulations of the Madras, and 259 Regulations of the Bombay Code were passed, but of these only 33 and 20, respectively, are now, wholly or in part, in force. In the case of Bombay, a course similar to that taken by Lord Cornwallis in Bengal in 1793 was adopted in 1827, when a Regulation repealing all the 79 Regulations made up to that time was passed and a Revised Code was compiled.

3. By the East India Company Act, 1813 (53 Geo. III., c. 155), the legislative powers of the then Councils were extended and subjected to further control. "Thus," writes Cowell, in his "History and Constitution of the Courts and Legislative Authorities in India," at page 67, "from time to time the legislative powers of the Council were developed; and, in pursuance of these powers, they enacted Laws and Regulations till 1834. Down to that date, which is the important epoch in the

history of Indian legislation, there were five bodies of Statute law in force in the empire. *First*, there was the whole body of English Statute law existing in 1726 so far as it was applicable, which was introduced by the Charter of George I., and which applied, at least, in the Presidency Towns. *Secondly*, all English Acts subsequent to that date which are expressly extended to any part of India. *Thirdly*, the Regulations of the Governor-General's Council, which commence with the Revised Code of 1793, containing forty-eight Regulations all passed on the same day (which embraced the results of twelve years' antecedent legislation), and were continued down to the year 1834. They only had force in the territories within the Presidency of Bengal. *Fourthly*, the Regulations of the Madras Council, which spread over the period of thirty-two years, viz. from 1802 to 1834, and are in force in the Presidency of Fort St. George. *Fifthly*, the Regulations of the Bombay Code, which began with the Revised Code of Mr. Mountstuart Elphinstone in 1827, comprising the results of twenty-eight years' previous legislation, and were also continued till 1834, having force and validity in the Presidency of Fort St. David."

4. Many of these Regulations have been extended to other provinces with or without modifications, either by notification under s. 5 of the Scheduled Districts Act, 1874 (XIV. of 1874) or by express enactment.

Acts of the Governor-General in Council.

IV. 1. By 1833, the weakness and uncertainty of the system of legislation by Regulations for the three provinces had become apparent (see Cowell's "Courts and Legislative Authorities in India," p. 681). The Government of India Act, 1833 (3 & 4 Will. IV., c. 85) swept away the existing legislative authorities, and placed legislative power in the hands of a single authority, namely, the Governor-General in Council. By the Government of India Act, 1853 (16 & 17 Vict. c. 95) provision was made for Additional Members being associated with the Council for legislative purposes, and by the Indian Councils Act, 1861 (24 & 25 Vict. c. 67) provision was made for the re-establishment of local legislatures, and the constitution of the Governor-General's Legislative Council was developed and regulated. It is under this Statute, as amended by subsequent statutes, that Acts of the Governor-General in Council are now made. The proper title of the Legislative Council appears to be "the Governor-General in Council at meetings for the purpose of making laws and regulations."

The laws made by this body are always called "Acts of the Governor-General in Council" while the term "Regulation" is confined to Regulations made under the Act of 1870, as to which see *post.*, p. 307.

Extent of powers.

2. The powers of the Legislative Council are both territorial and extra-territorial. Its territorial powers may be summarized as follows:—

Subject to the Secretary of State's power of disallowance, and subject to the exceptions hereinafter specified, the Council may make laws for all persons, for all Courts, and for all persons and things within British India (24 & 25 Vict. c. 67, s. 22). The laws so made have the force and effect of Acts of Parliament (see 3 & 4 Will. IV., c. 85, s. 45; *R.* v. *Burah* (1878), L. R. 5, Ind. App. 178: and *Alter Caufman* v. *Government of Bombay*, Ind. L. R. 18 Bo. 636; but note *Damodhar Gordhan* v. *Deoram Kanji* (1875) (known as the Bhaunagar Case), Ind. L. R. 1 Bo. 367, and L. R. 3 Ind. App. 102, where s. 113 of the Indian Evidence Act was held to be inoperative).

As to legislation for territorial waters, see the Transport of Salt Act, 1879 (XVI. of 1879), and the Obstruction on Railways Act, 1881 (XVI. of 1881), and the proceedings in Council, *Gazette of India*, 1879, Supp. p. 1224; 1881, Supp. p. 19.

The extra-territorial powers of the Legislative Council may be summarized as follows:—

Subject to the restrictions noted above, the Council may—

(*a*) make articles of war for native officers and soldiers wherever they may be serving (3 & 4 Will. IV., c. 85, s. 73).

(*b*) make laws for all servants of Government "within the dominions of princes and states in alliance with Her Majesty."

(*c*) make laws for "all British subjects within the dominions of princes and states *in India* in alliance with Her Majesty" (28 & 29 Vict. c. 17, s. 1).

(*d*) make laws for Native Indian subjects, anywhere, either within or without British India (32 & 33 Vict. c. 98, s. 1).

(*e*) under certain conditions, make laws for all persons serving in the Indian Marine Service in Indian waters, as defined by the Act of 1884 (47 & 48 Vict. c. 38).

There are also certain Acts of Parliament which enable the legislatures of British possessions to deal with special subjects which may involve extra-territorial legislation. See, for example, the Extradition Act, 1870 (33 & 34 Vict. c. 52), ss. 18 and 23; the Slave Trade Act, 1876 (39 & 40 Vict. c. 26), s. 2: the Fugitive Offenders Act, 1881 (44 & 45 Vict. c. 69), s. 32; the Colonial Probates Act, 1892 (55 Vict. c. 6), s. 1; and the Merchant Shipping Act, 1894 (57 & 58 Vict. c. 60), ss. 735 and 736.

Restrictions.

3. The restrictions on the powers of the Indian legislature are that it cannot make laws repealing or affecting the unrepealed provisions of the following Acts made prior to 1861, namely, the Government of India Act, 1833 (3 & 4 Will. IV., c. 85), except ss. 81–86; the Government of India Act, 1853 (16 & 17 Vict. c. 95); the Government of India Act,

1854 (17 & 18 Vict. c. 77); the Government of India Act, 1858 (21 & 22 Vict. c. 106); the Government of India Act, 1859 (22 & 23 Vict. c. 41); nor can it repeal or affect any Act of Parliament passed after 1860 which in any wise relates to India. Among the Acts which it cannot touch is the Army Act (44 & 45 Vict. c. 58), but express power to alter s. 136 of that Act (deductions from pay) is given by s. 4 of the Army Annual Act, 1895 (58 Vict. c. 7).

Further, the Indian legislature cannot pass any Act which "may affect the authority of Parliament, *or the constitution and rights of the East India Company*, or any part of the unwritten laws or constitution of the United Kingdom of Great Britain or Ireland, whereon may depend in any degree the allegiance of any person to the Crown of the United Kingdom or the sovereignty or dominion of the Crown over any part of the said territories" (24 & 25 Vict. c. 67, s. 22). It will be remembered that though the Government of India was transferred to the Crown in 1858, the East India Company was not formally dissolved until 1874. It may be noted that any Act giving power to any Court, other than a Chartered High Court, to sentence European British subjects to death requires the previous sanction of the Secretary of State (3 & 4 Will. IV., c. 85, s. 4, and 47 & 48 Vict. c. 38, s. 5); and Acts relating to the debt or revenues of India, religion, army discipline or foreign relations require the previous sanction of the Governor-General (24 & 25 Vict. c. 67, s. 19).

Power to bind Crown.

4. It is a well-established rule in England, that the Crown is not bound by a statute unless it is expressly or by necessary implication named therein, on the ground that the legislature makes laws for subjects and not for the sovereign. In Campbell's *Ruling Cases* (1896), vol. 8, p. 201, the principle is thus stated:—"The Crown is not bound by a statute, unless it appears on the face of the Act that the Crown should be bound by it. But the Crown may claim the benefit of the provisions of any Act of Parliament." The same rule has been adopted in the United States. "The American Doctrine is uniformly settled that the Government or a State is not bound by a statute unless named in it." (*Ibid.*, p. 203). In a recent case it was sought to make Chelsea Bridge liable for poor-rates. But as the statutes imposing poor-rates did not name the Crown, and as the bridge was built by the Commissioners of Works out of public money, it was held that the bridge was not rateable. *R.* v. *MacCann* (1868), L. R. 3, Q. B. 141, 677.

Inasmuch as India is now governed "by and in the name of Her Majesty" (21 & 22 Vict. c. 106, s. 2), and as the powers of the Indian legislature are wholly derived from Parliament, it seems clear that an Indian Act cannot bind the Crown or the executive of the Crown unless

Parliament has in terms bestowed on it power to do so. The only provision in point appears to be s. 24 of the Indian Councils Act, 1861 (24 & 25 Vict. c. 67), which provides that no law or Regulation made by the Governor-General in Council "shall be deemed invalid by reason only that it affects the prerogative of the Crown." This provision probably authorizes the legislature in India to bind the executive of the Crown (that is the Government) by its Acts. But the rules that the Crown must be named in an Act in order to be bound thereby, appears to apply *a fortiori* to Acts of the Indian legislature (see *Secretary of State* v. *Bombay Landing Co.*, 1868, 5 Bom., H. C. Rep. O.C.J. 23.

Regulations under 33 Vict. c. 3.

V. 1. In 1870, an additional power of legislation was bestowed by Parliament on the Indian Government. By the Government of India Act, 1870 (33 Vict. c. 3), the Governor-General in (executive) Council is authorized to make Regulations for the peace and good Government of certain territories in India. The object of this statute was to provide a more summary and elastic procedure for making laws for the more backward parts of British India. S. 1 empowers the Local Government to propose to the Governor-General in Council draft Regulations for any territory to which the Secretary of State has declared that section applicable. The Governor-General in Council is then directed to take the draft into consideration. If the policy of the measure is approved, the form of the draft is considered by the Legislative Department, and the draft is returned, if necessary, to the Local Government for resubmission. When the draft Regulation, so prepared, has been approved by the Governor-General in Council, and has received the Governor-General's assent, it is published in the *Gazette* of India and the local *Gazette*, and thereupon "has the like force of law and is subject to the like disallowances as if it had been made by the Governor-General in Council at a meeting for the purpose of making laws and regulations."

2. The Statute of 1870 was the result of a despatch from the Government of India to the Secretary of State, dated the 10th of January, 1868, which was drafted by Sir H. S. Maine. The despatch points out that when new and wild territory is annexed it becomes at once an integral part of British India, and British Indian law applies to it. But a refined and elaborate system of law is wholly unsuitable to such territory and its population. To a greater or less extent the people must be left to follow their own customs, and the introduction of English law must be gradual and tentative. "A simpler mode of exercising legislative power than that provided by the Indian Councils Act would seem desirable for the purpose of legalizing such experiments; and, in fact, the legislative machinery which we prefer for these wild territories would differ

only from the executive machinery now applied by the Punjab Government in its securing a greater degree of caution and deliberation for all measures that might be adopted towards the chiefs and people." ("Life of Sir Henry Maine," by Grant Duff, p. 360, where the despatch is cited at length.)

3. Under the powers conferred by the Statute of 1870 a large number of Regulations have been made for the wilder parts of Bengal, Bombay, the North-West Provinces, the Punjab and Burma, and for Coorg, Ajmere, Assam, the Andaman Islands, British Baluchistan, and also Aden.

4. It is to be noted that, with the exception of s. 5 (1) and (2) (commencement of Acts) the provisions of the General Clauses Act, 1897 (X of 1897), apply to Regulations. There is no difference in form between a Regulation and an Act, except that in the former case the word "Regulation" is used, where in the latter case "Acts" would be used.

5. The Regulations applicable to the territories under the various Local Governments are collected in the Local Codes published by the Legislative Department.

Ordinances.

VI. 1. By s. 23 of the Indian Councils Act, 1861 (24 & 25 Vict. c. 67), power is given to the Governor-General to make temporary laws in cases of emergency without the intervention of his Council, either Executive or Legislative. These laws are called "Ordinances." Their operation must not exceed six months, and they may be disallowed by the Secretary of State in Council. Subject to these limitations, they have the like force as an Act of the Governor-General in Council.

2. Referring to this provision, the Secretary of State in a despatch, dated the 10th of August, 1861, says, "It is due to the supreme authority in India, who is responsible for the peace, security, and good government of that vast territory, that he should be armed with this power; but it is to be called into action only on urgent occasions, the reasons for the resort to it should always be recorded, and these, together with the ordinance itself, should be submitted without loss of time for the consideration of Her Majesty's Government."

3. As to the effect of the expiry of a temporary enactment, see Hardcastle "On Statutes," ed. 2, p. 389. The term "Ordinances" was probably selected, because the laws made by the Governors of Crown Colonies in the exercise of the delegated prerogative of the Crown are called Ordinances.

4. The exceptional power conferred by s. 23 of the Act of 1861 has only been exercised six times. For a precedent, reference may be made to *Gazette of India*, 1876, Pt. I., p. 119 (*Ordinance empowering the Government of Bengal to prohibit certain dramatic performances.*)

VII. 1. By the Indian Councils Act, 1861 (24 & 25 Vict. c. 67), Local Legislatures were re-established, though with more limited powers than were possessed by Bengal, Madras, and Bombay, before the Act of 1833. At present local legislatures have been constituted in six provinces, namely: Bengal, Madras, Bombay, the North-Western Provinces and Oudh, the Punjab, and Burma. Acts of Provincial Legislatures.

2. All these legislatures possess equal powers, which may be summarized as follows. Their powers are strictly territorial (see the language of ss. 43 and 44), and they cannot in any way alter or affect the provisions of any Act of Parliament for the time being in force (see s. 42).

Further by s. 43 of the Act of 1861 read with s. 5 of the Indian Councils Act, 1892 (55 & 56 Vict. c. 14), a local legislature may not without the *previous* sanction of the Governor-General introduce or pass any Act:—

(1) affecting the Public Debt or the Customs Duties or any other Tax or Duty imposed by the Government of India for the purposes of that Government;

(2) regulating the current coin or the issue of any Bills, Notes, or other Paper Currency;

(3) regulating the conveyance of letters by the Post Office or messages by the electric telegraph within the province;

(4) altering in any way the Indian Penal Code;

(5) affecting the religion or religious rites and usages of any class of Her Majesty's subjects in India;

(6) affecting the discipline or maintenance of any part of Her Majesty's naval or military forces;

(7) regulating patents or copyright;

(8) affecting the relations of the Government with foreign Princes or States;

(9) repealing or amending for its own territory any law or regulation made by any authority in India other than that local legislature.

3. It is plain that it may sometimes be difficult to determine whether a given enactment does or does not come within the foregoing prohibitions. To avoid the complications which might arise from an erroneous construction of the powers of local legislatures, the Act of Parliament provides that if a local Act is duly assented to by the Governor-General it shall not be invalid by reason only that it ought to have had his previous sanction. An Act so assented to comes within the maxim *fieri non debuit, sed factum valet.*

4. A local legislature cannot directly affect the jurisdiction of the Chartered High Courts, for they are established under the Statute 24 &

25 Vict. c. 104; but it has been held that an Act which indirectly affects the High Court by limiting the appeal from the Courts below is not within the prohibition of the Indian Councils Act, 1861, see *Premshankar Raghunathji* v. *Government of Bombay*, 1871 (8 Bom., H. C. Rep. A. C.), 195; *Collector of Thana* v. *Bhaskar Mahadev Sheth*, 1884 (Ind. L. R., 8 Bom. 264.

5. The Secretary of State, in a despatch dated the 1st of December, 1862, ruled that every Bill of a local legislature containing penal clauses should be submitted to the Governor-General for his *previous* sanction; and in a despatch dated the 3rd of December, 1896, he pointed out that when a general Act of the Governor-General in Council is amended by a local legislature it is inconvenient to incorporate the new provisions which are intended to have only a local application in the general Act, and that in such cases the new provisions would more appropriately be framed as a separate Act of the local legislature to take effect with the sanction of the Governor-General and notwithstanding anything contained in the general Act.

6. It is to be noted that an Act of a local legislature does not come into force "until the Governor-General shall have assented thereto, and such assent shall have been signified by him to, and published by, the Governor," or Lieutenant-Governor, as the case may be. See s. 40 of the Indian Councils Act, 1861.

Statutory rules, etc., made under English Acts.

VIII. In modern times the practice has sprung up of delegating certain powers of legislation to public authorities and local bodies. The Act of Parliament deals with the main principles of the measure, and then leaves the subordinate details to be dealt with by the more flexible machinery of rules, orders, regulations, or bye-laws as they are variously called. In a few cases power is given to authorities in India to make rules to carry into effect the provisions of English Acts. For example s. 8 of the Indian Councils Act, 1861 (24 & 25 Vict. c. 67) empowers the Governor-General to make rules and orders "for the more convenient transaction of business" in his Council.

When legislative powers are thus delegated to subordinate authorities, the powers must of course be exercised in accordance with the authority given, and it is a question for the Courts to determine whether the authority has or has not been exceeded. It is a clear rule that no Court can question the validity of an Act of Parliament (Hardcastle on "Statutes," ed. 2, p. 81), but the numerous decisions on the exercise of delegated powers of legislation have established certain rules of construction in relation to them. "The amount of deference paid by the Courts to this class of legislation depends on the character of the authority of the delegated law-giver, and the intention expressed or to be implied

from the language of the legislature as to the extent of authority or respect to be attached to the instrument in question" (*Ibid.*, p. 301). The Courts exercise a keen supervision over municipal bye-laws or bye-laws made by trading corporations such as railways under their private Acts. But they are very loth to interfere with rules made by the judges, or administrative departments of the State. Thus in a case where a rule made by the Lord Chancellor with the concurrence of the Board of Trade under the Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), took away the right of appeal to the High Court in cases under £50, both the High Court and the Court of Appeal upheld the validity of the rule, and Lord Esher in his judgment says "whenever the objection is taken that a general rule made by such a great judicial officer, with the concurrence of a great officer of State, is *ultra vires*, it will be necessary for the Court, if it has to decide the point, to look at the rule with extreme care, and we should be strongly inclined to the view that such high functionaries had not exceeded their authority, though of course, if we thought they had, we should be bound to say so," *Ex parte Forman* (1887) 18 Q. B. D., 393, 400, cf. *Re Stainton* (1887) 19 Q. B. D., 182.[1]

Statutory rules, etc., made under Indian legislation.

IX. The practice of leaving subordinate details of legislation to be worked out by rules or orders has been widely adopted in India. Apparently the first Act which gave this delegated power was Act 11 of 1850, s. 3. Now nearly every Act contains a rule-making power, and if the statutory rules, orders, regulations, bye-laws, and notifications were collected together they would probably be equal in volume to the Acts themselves. The scope and extent of the authority of these rules depends of course upon the terms of the enactment empowering them to be made, which vary greatly; but in judging of their validity Indian Courts would probably be guided by the same considerations that the English Courts have applied to rules and bye-laws made under English statutes. It is to be noted that ss. 20 to 24 of the General Clauses Act, 1897 (10 of 1897) apply to this class of enactment.

Executive orders made for non-regulation provinces prior to 1861.

X. The territories under the Government of the East India Company were divided into Regulation and Non-regulation provinces. The territories outside the Bengal, Madras, and Bombay presidencies were known as Non-regulation provinces, because the Regulations made for the old presidencies did not apply to them. It was assumed that they were on the like footing as Crown Colonies, and that they were to be governed

[1] As to the competency of Courts to question the validity of rules made under a statute which provides that the rules shall take effect as if enacted in the Act, and provides that such rules shall be laid before Parliament for a specified period and be subject during such period to annulment, see *Institute of Patent Agents* v. *Lockwood* L. R. (1894), App. Cas. 347.

by the executive power. Orders and Regulations were made for them either by the Governor or by the Governor-General in Executive Council. Doubts having arisen as to the validity of these Orders and Regulations s. 25 of the Indian Councils Act, 1861 (24 & 25 Vict. c. 67) provided that they should not "be deemed invalid only by reason" that they had not been made in accordance with the statutory requirements of ordinary Indian legislation. The Act has been construed as impliedly prohibiting such legislation for the future. These Orders and Regulations have never been collected, and probably most, or nearly all, of them which have not been expressly annulled are now obsolete. In 1870 Sir F. Stephen after referring to the "extraordinary indistinctness" of this body of legislation, proceeds to give the following illustration. "It was ordered on the conquest of some of the provinces—the Punjab for instance—that the *spirit* of the Bengal Regulations should be applied to them, and various orders have been issued at different times, and with respect to different provinces, extending the provisions of particular Regulations and Acts in a more or less indefinite manner to those provinces. The Circular Orders too, which have the force of law, were, in many instances, not drawn up by lawyers or with any reference to legal principles, but were intended to meet the exigencies of that state of discretionary Government, which is now passing, if it has not passed away. When such orders come before Courts of law, and are interpreted strictly, the results are often lamentable." As to express repeal (see Schedule I. to the Punjab Laws Act, 1872 (4 of 1872).

Publication of Statute law.

The origin and scope of the ten classes of enactment which, in combination, may be said to form the *lex scripta* of India, having been traced, it may be useful to note how far that body of statutory enactment has been collected in any form which is accessible to the public who are governed by it. Sir J. F. Stephen, in a minute of the 10th of February, 1870, after commenting on the defects which are common to all Statute books, observes that "the Indian Statute book is one which is peculiar to itself. If it were not a contradiction to say so, I should describe this fault as consisting in the fact that it does not exist. I mean by this that the written law of India is nowhere collected into one body, but is to be found in a greater number of repositories than the written law of almost any other country." Since 1870 much has been done, but to some extent the Indian Statute book is still open to the same reproach.

(1) The Acts of Parliament concerning India up to the year 1881, are collected and published in Whitley Stokes' "Collection of Statutes relating to India," 2nd edition. But this work is now out of date, and requires supplementing and testing from other sources. Many of the statutes it contains have

been repealed, others have been amended, and more than twenty new Acts affecting India have been passed.

(2) The Orders in Council relating to India have never been collected,[1] but references to them may be found under the heading "India" in the "Index to Statutory Rules and Orders," published by the Statute Law Committee in England.

(3) The Acts of the Governor-General in Council from 1834 to 1897, are published in annual volumes, and a revised edition of the Acts from 1834 to 1888 has been published by the Legislative Department. The Chronological Table of the Acts has been brought down to 1896. A new edition of the "Index to the enactments relating to India" has just been published.

(4) Local codes have been published by the Legislative Department for the eleven provinces under the Indian Government. These Codes contain, (*a*) the old Regulations so far as they are in force in the province in question, (*b*) Local Acts of the Governor-General in Council, (*c*) Regulations under 33 Vict. c. 3, applying to the province in question, and (*d*) Acts of the Local Legislature if any. The dates of the latest editions of these Local Codes are; Madras, 1888; Punjab, 1888; Burma, 1889; Bengal, 1889–1890; Baluchistan, 1890; Central Provinces, 1891; North-Western Provinces and Oudh, 1892; Ajmere, 1893; Coorg, 1893; Bombay, 1894 to 1896; Assam, 1897.

(5) No collection has been published of Statutory Rules and Orders, but the Legislative Department has published a list of the Rules and Orders made under General Acts, with references to the *Gazette*, and the Local Governments are publishing collections and lists of local rules and orders; but there is nothing corresponding to the "Index to Statutory Rules and Orders" published by the Statute Law Committee in England, or to the annual collection which is published by that body.

Side by side with the British Indian Statute Book, there exists a large

[1] The Orders in Council issued prior to 1890, and still in force, have now been collected in the volumes of "Statutory Rules and Orders Revised," and those of subsequent date are contained in the annual volumes of "Statutory Rules and Orders." In these volumes, which are edited under the direction of the Statute Law Committee in England, the Orders are arranged in groups under the heading of law to which they pertain, such heading in each case corresponding to a heading in the "Index to the Statutes in Force," and to a heading in the "Index to Statutory Rules and Orders" referred to below.

body of laws for State territory, closely following British Indian legislation, but owing its authority to a wholly different source. The Governor-General in Council, by what may be called the executive power, makes laws for assigned districts, British cantonments, residency bazaars, railways, lands, and other ceded jurisdictions in the territories of Native States. The laws so made do not owe their validity either to the English or to the Indian legislatures, but derive their authority from the delegated prerogative of the British Crown, which is the suzerain and paramount power in India. For instance, the provisions of many Indian Acts have been *applied* to the civil and military stations of Bangalore, which is in the Mysore State. But those Acts are not in force in Bangalore as Acts of the Indian legislature. It would have been equally competent to the Governor-General in Council to have applied the corresponding provisions of the French or German Codes. The laws so made by the executive action of the Crown may be compared to the Ordinances made by the Governors of Crown Colonies, and they may also be compared to the Orders made by the Queen in Council for establishing consular courts in Eastern States, or for regulating African Protectorates. But neither parallel is quite exact, for there is nothing elsewhere which exactly corresponds with the divided sovereignty which exists in the case of the Native States of India.

It may be noted that these laws have now been collected, and that for the reasons given above, they form no part of the British Indian Statute Book. Lists of them will be found in Macpherson's "Lists of British Enactments in force in Native States."

REGISTRATION OF DEEDS IN MAURITIUS.[1]

Mr. Julius Guibert, the Crown Attorney of Mauritius, has favoured us with some notes on the system of deed registration introduced into that Colony in 1863. Deed registries, practically the same as the Middlesex and Yorkshire systems, have existed for a considerable period in most of the British Colonies, and in India, and have only given way to be replaced by the more popular and efficient "Torrens" system of registration of title. But the present example is interesting as being based on the French real property law, which prevails in the island, instead of on the British legal system.

"The law in force in Mauritius" (says Mr. Guibert) "respecting the transfer by sale of real property is borrowed from the provisions of the Code Napoleon of France.[2]

"In virtue of s. 1583 of that code, the sale (derogating in this respect from the Roman Law), transfers the ownership of personal and real property by the sole power of the will of parties. It is complete between the parties, says the said section, and the property is acquired in law by the purchaser with regard to the vendor as soon as the thing and price are agreed on, even though the thing has not been delivered nor the price paid."

The law as between the individual vendor and purchaser being thus laid down, there arises of course, in certain cases, the further question of priority in respect of third parties. Here it is that the registration system has been added to safeguard the purchaser from the risk of a fraudulent vendor having already legally conveyed or mortgaged the property to some one else. Mr. Guibert describes the registration law as follows:—

"The law of France of the 23rd March, 1855, and the Ordinance of Mauritius (No. 36 of 1863) have laid down with regard to *third parties*,

[1] Edited by Mr. C. Fortescue Brickdale, assistant Registrar of Land Registry.

[2] Promulgated on the 16th of March, 1804.

a most useful disposition, namely, that as far as *third parties* are concerned, the sale has no legal existence until it has been made known by the transcription on special public registers of the instruments evidencing the same.

"Before the above Ordinance came into force, *i.e.* before the 1st of June, 1864, in Mauritius, and in France before the 23rd of March, 1855, one who intended to buy a real property could not ascertain whether the said real property had not been previously sold, by means of regular instruments, duly registered; the books of the Registration Office being then as they are now, sealed from the view of the persons who are not parties to the instruments whereby such sales are proved.

"It is well to notice here that in Mauritius there is a public office under the control of a functionary called the conservator of mortgages,[1] in which special registers are kept, and in which are duly transcribed under the aforesaid Ordinance: Every deed of transfer, *inter vivos*, of any immoveable property or of any real right capable of being mortgaged, and every deed, declaratory of any such property or right; every deed importing renunciation of any such right; every judgment declaratory of the existence of any verbal agreement of the nature above mentioned; every judgment of adjudication; every deed constituting any pledge of immoveable property (*antichrèse*), or any servitude or right of use (*droit d'usage*) on any immoveable property; every deed importing renunciation of the right in the above article enumerated; every judgment declaratory of the existence of any such right in virtue of any verbal agreement; every lease of rural property (*bail à ferme*) of whatever duration; every deed of judgment establishing the discharge or transfer of rent (whether of money or produce) not due at the date thereof under any such lease; every lease of house property (*bail à loyer*) of more than three years' duration; every deed or judgment establishing discharge or transfer of rent not due at the time under any lease whatsoever of house property when the amount thereof exceeds one year's rent.

"The conservator of mortgages is empowered by s. 5. of the aforesaid Ordinance to deliver, whenever required so to do, on his own responsibility, a certificate, either special or general, of the entries made in his registers."

Still, the system apparently goes no further towards a state guarantee of title than our own deed registries do, and does not approach the problem already successfully solved in the colonial "Torrens" systems and in the German and Austro-Hungarian systems, treated in a

[1] Who corresponds to a Registrar of Deeds.

preceding article,[1] to which systems Mr. Guibert also makes reference in the paper he has sent us.

"The purchaser" (he continues), "in spite of the *primâ facie* evidence derived by him from the transcription of his vendor's title, would be greatly mistaken if he thought that such a title cannot be disputed, as not emanating from the true owner of the property.

"In France and in Mauritius, the registers above mentioned have only a negative authority. The purchaser might find therein the proof that his author has not alienated his real property, but he cannot therein find the conviction, '*assurance*,' that his author be really owner of the property sold.

"In France and in Mauritius, the conservator of mortgages is an administrator. He has not to decide on the validity or invalidity of the titles delivered to him to be transcribed."

[1] *Ante*, p. 49.

REAL PROPERTY LAW IN TRINIDAD AND TOBAGO.

[*By H. Clarence Bourne, Esq., of the Inner Temple, Barrister-at-Law, Examiner of Titles for Trinidad and Tobago.*]

In this article I make no attempt to give an adequate statement of the law of real property in Trinidad. I merely wish to indicate how English law in the hands of English lawyers has grown up in a British Colony.

When, in 1797, Trinidad became a British possession, the common law of the Colony was Spanish,[1] and so it remained for nearly fifty years. As regards real property, the law now is, and has long been, English; and the common law, the equity, the practice, and the Statute law are now substantially English. The change has, for the most part, been brought about, not by direct substitution, but by a process of which the Legislature has been but half conscious.

In 1843 an Ordinance was passed "to alter and amend the laws which restrain the free disposition of property by persons leaving heirs in the direct descending or ascending line."[2] While saving the "*legitima*" of "heirs" being the issue of certain marriages prior to the date of the Ordinance, or in the direct ascending line from persons then domiciled in the Colony, it provided that, subject thereto, any person might dispose of his real and personal property by deed or will, either absolutely or in trust, "as freely as he could dispose of the same by the law of England." Throughout this Ordinance English terminology is used, and the appearance of such words as "real and personal property," "convey," "appoint," "devise," and "trust," which do not purport to be translations from the Spanish, suggests at once the question, "How far did their use *ipso facto* import the ideas which they respectively connote in English law? Questions of a similar nature are, as we shall see, constantly raised by subsequent legislation on the same lines: nor

[1] See *Picton's Case*, 1804–1812, 30 St. Tr. 225–960, and Proclamation of the 19th f June, 1813. Howard's "Laws of British Colonies," vol. i. p. 534.

[2] No. 6 of 1843.

has there been any case-law to determine them. Appeals from the local bench to the Privy Council have been few, and the decisions of local judges have seldom been reported in an authoritative form.

In the next year "an Ordinance for assimilating the law with respect to wills to the law of England" [1] was passed. Here we find the Wills Act of 1837 dumped down on a Spanish foundation. We have, for instance, the following: "Where any real estate shall be devised to any person without any *words of limitation*, such devise shall be construed to pass the whole estate or interest which the testator had power to dispose of," etc. What, we may ask, is the effect of a devise with words of limitation? Take, again, the reference to "freehold" and "leasehold" "estates," and the following: "Where any real estate shall be devised to any person in such manner that such person would, according to the law of England, take an estate tail, or an estate in quasi-entail, and such person shall die in the lifetime of the testator, leaving issue who shall be inheritable under such entail; and any such issue shall be living at the time of the death of the testator, such devise shall not lapse but shall take effect as if the death of such person had happened immediately after the death of the testator, unless a contrary intention shall appear by the will." Again, we have the section construing the words "die without issue," "die without leaving issue," and "have no issue," and referring to the case where they import the absence of "issue who shall . . . answer the description required for obtaining a *vested estate* by a preceding gift to such issue." When at the same time we find all laws "in any way contrary or repugnant to, or inconsistent with" this ordinance thereby repealed, one pauses to ask, Where are we? Have we or have we not made the rule in Shelley's case, and all that it implies, law in Trinidad?

Concerned as I am with implicit rather than explicit legislation, I may pass over the local Statute of Frauds [2] and the "Ordinance for the limitation of personal and mixed actions." [3] An Ordinance passed the same year and importing the English law of dower and of tenancy by the curtesy, introduces and defines "Chattels real." [4] The Probate Ordinance of 1845 [5] makes realty assets in the hands of heirs or devisees.

The Real Property Limitation Ordinance [6] of the same year, while fixing periods of prescription differing from those obtaining in English law, introduces the expressions "estate in reversion or remainder," "estate in possession," "tenant at will," "tenant from year to year," "joint tenants," and "tenants in common." With regard to the last

[1] No. 1 of 1844. [2] No. 5 of 1844. [3] No. 8 of 1844.
[4] No. 14 of 1844 [5] No. 4 of 1844. [6] No. 10 of 1845.

two expessions, at any rate, it can scarcely be doubted that their introduction imported the incidents of such tenancies respectively, and made them applicable to any tenancies which might come into existence under such circumstances that in English law they would be held to be a joint tenancy or a tenancy in common, as the case might be.

The last-mentioned Ordinance contains one remarkable provision.[1] "Nothing herein contained shall be deemed to interfere with any *equitable rule* of the Supreme Civil Court of the Colony in refusing relief on the ground of acquiescence or otherwise." This seems to be the first recognition in the local legislation of the existence of any equitable jurisdiction in the Court. The Ordinance does not, it is true, expressly confer any authority which did not previously exist, but it seems to treat the Court as already possessed of some inherent power to apply the principles of English equity.

In the same year an Ordinance[2] was passed dealing with the administration of the estates of deceased persons, and abolishing the tacit mortgage of minors. This expressly empowers the Supreme Court to "have and exercise such and the same powers and authority to enforce a due administration of the assets, as well real as personal . . . as are had and exercised by *Courts of Equity* in England."

Another important measure was passed in 1845. In "an Ordinance for improving the remedies of creditors against the property of their debtors,"[3] the wording of the Statute 13 of Elizabeth, c. 5, is followed closely enough to import the mass of case-law based on that Statute. This measure also made registered judgments a charge on the debtor's land, but provided that no mortgage, except the tacit mortgages whose existence was for the time being saved, should affect land unless it was expressly conveyed or charged.

The Ordinance No. 23 of 1845, to assimilate the law of Mortgage to that of England, displays the features of English law without disguise. The doctrine of "uses" has never been expressly introduced, and it would be difficult to say when the word "use" became a term of art in Trinidad; but this Ordinance provides that a mortgage made in the form employed in like cases in England "shall vest in the mortgagee the same *legal estate* and interest in the property . . . as the mortgagee would take in the like case according to the law of England, subject nevertheless to the same *equity of redemption* as the mortgagor . . . would be entitled to in the like case according to the course and practice of the Courts of Equity in England."

The Law of Inheritance[4] (except in one important particular referred

[1] S. 20. [2] No. 14 of 1845. [3] No. 19 of 1845.

[4] No. 24 of 1845, which had the effect of preventing the legitimation of *ante nati*

to below), of ejectment[1] and re-entry, and of covenants running with the land, privity of estate, and warranties,[2] was, by various ordinances, in the same year assimilated to that of England. In the first of these "land" is defined to include corporeal and incorporeal hereditaments, any *estate of inheritance* or transmissible to heirs by the law of England, and any possibility, right, etc., or interest capable of being inherited according to the law of England; and the words "purchaser" and "descent" are made terms of art. In each of the others the assimilation is made by a general reference to the law of England. In the next year an "ordinance to assimilate the law of leases and for the recovery of rent,"[3] etc., to the law of England proceeds in the same way.

Two years later an Ordinance to extend and define the jurisdiction of the Supreme Court[4] repealed the law of Spain relating to actions, forms of procedure, and costs (with certain saving provisions as to *Tercerias* and suits for *dote*), and gave to every person "the like relief in equity, or the like remedy by action at law, as he would be entitled to and have in the like case in England;" and also declared that questions of pleading, of evidence, and of costs should be decided according to the law of England in like cases.

In 1851 the Crown was declared to be entitled to the foreshore[5] and reclaimed land, and to natural savannahs.[6]

Locke King's Act (17 & 18 Vict. c. 113) was introduced in 1855.[7] The same year[8] married women were empowered to dispose of land by deed concurred in by the husband, and separately acknowledged. Succeeding Ordinances dealt with partition,[9] and with the descent of realty held on trust or mortgage.[10]

We next reach a remarkable piece of legislation. The Ordinance to amend the law of real property, after enacting that a release of a freehold estate is to take effect as "a conveyance to uses,"[11] and to operate, at law and in equity, as if a deed of bargain and sale, or of lease and release, had been duly executed, ultimately provides, in its blind pursuit of English legislation, that henceforth the conveyance of freeholds is "to lie in grant as well as in livery." A substitute for enrolment is found in registration. Merger is also dealt with.

The difficulty of the situation seems at length to have been felt. Had the legislature, while replacing Spanish bricks by English, substituted the

by marriage after the 12th of March, 1846. *Escallier* v. *Escallier*, L. R. (1885), 10 App. Cas. 312.

[1] No. 35 of 1845. [2] No. 36 of 1845. [3] No. 1 of 1848.
[4] No. 4 of 1848. [5] No. 5 of 1851. [6] No. 7 of 1851.
[7] No. 13 of 1855. [8] No. 21 of 1855. [9] No. 8 of 1856.
[10] No. 4 of 1857. [11] No. 6 of 1858.

foundation on which alone the latter could rest? An Ordinance, bearing the modest title of "an Ordinance to explain Ordinance 6 of 1843,"[1] was passed to set things right. After reciting that in previous Ordinances, estates, interests, and rights known to English law, but not to Spanish, were referred to, it enacted that every deed or will made upon or after the 10th of June, 1844, should have the same effect as the same would have by the law of England, that any question as to its operation or construction, or as to the estate, use, trust, *confidence*, or interest of or in any real or personal property, created or given by, or arising or resulting by the implication or construction of law therefrom, or as to the quality, quantity, vesting, transfer, or extinguishment of, or the incidents to, any such estate, use, trust, confidence, or interest; or whether the estate, possession, and seisin is executed unto the person having the use, confidence, or trust; or as to the validity or effect, or the vesting, failure, or lapse of any direction, devise, or bequest contained in any such will; or as to the validity or effect of any condition contained in any such deed or will; or as to any power or the execution of any power thereby given; or as to the effect of any intestacy or partial intestacy; every such question should be decided according to the law of England.

This Ordinance contains some saving clauses, of which the most important is that which protects the right of children or other issue to inherit equally as co-heirs.[2]

The same Ordinance expressly repealed a great mass of the law which was in force at the time of the Cession of Trinidad to the Crown of Great Britain.

Subsequent legislation, so far as it relates to real property, has been chiefly concerned in adapting modern English Statutes to the needs of the Colony. There has also been considerable legislation with regard to the registration of deeds and other documents.[3] We have in turn Ordinances to amend the law of conveyance of real property vested in mortgagees and trestees,[4] to further amend the law of property,[5] and for the relief of trustees,[6] to facilitate leases and sales of settled estates,[7] to facilitate sales of infants' estates,[8] and for the redemption of quit rents.[9]

By the adaptation of the Judicature Acts to the requirements of the Colony the English character of the law became still more firmly secured. Section 12 of the local Ordinance confers on the Supreme

[1] No. 7 of 1858.
[2] See *Escallier* v. *Escallier*, L.R. (1885), 10 App. Cas. 312.
[3] No. 5 of 1862; No. 18 of 1884, etc.
[4] No. 4 of 1862. [5] No. 19 of 1864. [6] No. 26 of 1865.
[7] No. 10 of 1867. [8] No. 16 of 1876. [9] No. 28 of 1879.

Court of Trinidad and Tobago the jurisdiction in the Colony exercised by the High Court in England, and s. 17 enacts that all equitable claims and defences available in England shall be available in the Colony.

An Ordinance of 1883,[1] provides for the payment of debts out of real estate, and in 1884 [2] a Married Women's Property Ordinance was passed.

In its adaptation [3] of the Vendors and Purchasers Act, 1874, and the Conveyancing and Law of Property Act, 1881, the Legislature returned to its former methods. Among the many provisions introduced from the English Statutes is the following: "In the completion of any contract for the sale of land, and subject to any stipulation to the contrary in the contract, forty years shall be substituted as the period of commencement of title which a purchaser may require in place of sixty years, *the present period of such commencement;* nevertheless, earlier title than forty years may be required in cases similar to those in which earlier title than sixty years may now be required." As a matter of fact, thirty years had been generally treated by practitioners and purchasers as a sufficient period. The Judicature Ordinance, 1879 (s. 17, sub-s. 2), referred to above, provides that "if any defendant claims to be entitled to . . . relief upon equitable ground against any . . . contract . . . the Supreme Court . . . shall give to every . . . ground of relief so claimed . . . the same effect by way of defence . . . as the High Court of Justice in England ought to give, if the same . . . were relied on by way of defence in any action," etc. Did this enable a purchaser to insist on a sixty years' title? If not, in view of the declaration contained in the words "the present period," etc., the effect of the section would seem to be to lengthen the title on which an unwilling purchaser may insist, instead of shortening it.

In recent years Trinidad has not only followed closely on the heels of English legislation, but has now passed it. The Colony has, it is true, no Settled Land Act. The need of such a measure is not felt. The same Latin element in the population which led the Legislature to reject the principle of primogeniture when adopting the English law of inheritance and descent, has made the practice of executing settlements uncommon. But the registration of titles has been in operation in Trinidad since 1889.[4] Its introduction is due, no doubt, in part to the confused state to which titles, extending over the period with which we have been dealing, had been reduced. The Ordinance now in force (the Real Property Ordinance, 1895 [5]) is probably the most elastic adaptation

[1] No. 15 of 1883. [2] No. 16 of 1884. [3] No. 22 of 1884.

[4] No. 8 of 1889. See *Attorney-General for Trinidad* v. *Bourne* (1895), App. Cas. 83; *Sana* v. *Eriché* (1893), App. Cas. 518.

[5] No. 44 of 1895.

in existence of the Torrens system. As regards lands alienated from the Crown since 1889, and to be alienated hereafter—*i.e.* some two-thirds of Trinidad—the system is compulsory. As regards lands previously alienated, its application is optional, and proprietors have had recourse to it chiefly as a means of removing flaws from imperfect titles.

Such Ordinances as the Agricultural Contracts Ordinance, 1889,[1] the Metairie Ordinance (Tobago), 1892,[2] the Land Charges and Land Taxes Ordinance, 1893,[3] the Escheat Ordinance, 1894,[4] and the Land Acquisition Ordinance, 1896,[5] have had their origin in the special customs or the special needs of the Colony.

At the present time it would be difficult to mention a remnant of Spanish law now affecting Real Property in Trinidad, except such as is expressly preserved in the specific provisions of certain enactments. Even these survivals do not fit in well with the English system. We have referred to the descent of real property which devolves on all the children of an intestate equally. In a community of small proprietors, with whom it is the exception to make a will, this rule of descent leads to a multiplicity of partition actions; and it is not impossible that the difficulty so often caused in this way of making a title for a purchaser may lead to the extension of the provision inserted in the Real Property Ordinance, 1895,[6] whereby realty held under the "Torrens" system devolves on the personal representative to real estate generally.[7]

Other survivals of Spanish Law are the retention in official custody of all deeds affecting land, and the realization by sale and conveyance by the Court of land subject to mortgage or taken in execution.

Though this law is now English, local circumstances from time to time produce new and interesting cases for its application. What is the position of the receiver of a sugar plantation and factory? What right of support from neighbouring land exists where the soil of both tenements is permeated with semi-fluid pitch, where the value of each lies in the right to remove the pitch, and where the surface of either sinks if pitch is dug at any part of the other? In what case can there be the presumption of a lost grant as regards land in Trinidad, of which two-thirds has never been alienated from the Crown? These are some of the questions that present themselves in practice.

[1] No. 9 of 1889. [2] No. 17 of 1892. [3] No. 28 of 1893.
[4] No. 7 of 1894. [5] No. 5 of 1896.
[6] No. 44 of 1895; see *Journal*, vol. i. p. 131.
[7] See the Imperial Land Transfer Act, 1897, 60 & 61 Vict. c. 65, ss. 1–5.

NOTES ON THE STATE LEGISLATION OF AMERICA IN 1896.

[*By Albert Gray, Esq., of the Inner Temple.*]

"THE Seventh Annual Summary of State Legislation," published by the State Library of New York, is a volume of much smaller dimensions than its predecessor, which was reviewed in the columns of this journal last year. The separate items indexed for 1896 number only 1566, as compared with 4535 for 1895. The disparity is accounted for by a comparison of the number of legislatures in session in the respective years. Many of the States have adopted the practice of holding biennial sessions, and whether by accident or design, most of these fall in the odd years. The "Summary" of 1895 included the work of thirty-nine legislatures, while that of 1896 gives that of only fourteen. These comprise the six States where sessions are still held annually, namely—Massachusetts, New York, New Jersey, Rhode Island, South Carolina, and Georgia; and the eight States whose biennial sessions fall in even years, namely, Maryland, Virginia, Ohio, Kentucky, Louisiana, Mississippi, Iowa, and Utah. The entries further show the results of the submission to the people of an exceptionally large number of constitutional amendments referred to popular vote by the legislatures of 1895.

Few changes are to be noted in the law of family relations. New York passed a general law which gives married women almost complete independence as respects property, contract and torts. Virginia permits a man to marry the aunt of a former wife: whether he can marry her niece does not appear. Utah, which has quite recently attained Statehood, has still to reckon with her Mormon history, and passes laws for the legitimatizing of all children of polygamous marriages born before the 4th of January, 1896. In Virginia an absolute divorce may be granted three years after a limited divorce for desertion. This marks a reduction from five years.

Further attacks are made on gambling. Playing dice for money is prohibited in Louisiana; but whether the prohibition extends beyond public places, the "Summary" does not say. Virginia follows the lead of other States in fixing a close time for race-horses (December to March),

and in prohibiting pool-selling. The same State increases the penalty for prize-fighting from one to five years' imprisonment, while New York and Massachusetts prohibit sparring exhibitions where an admission fee is charged or the competitors receive pay. Ladies' fashions and law come into conflict in Ohio and Louisiana, where it is an offence to wear hats calculated to obstruct the view in theatres. A bill with a like object would probably meet with some support in this country.

Most of the legislatures had liquor law before them in one shape or another. South Dakota, formerly a prohibition State, proposed in 1895, as we noted last year, a constitutional amendment deleting the prohibition article, and this amendment has now been adopted by the people. In Iowa, where prohibition is in operation, but not as part of the constitution, a prohibition clause proposed to be added to the constitution has been rejected by the Legislature. South Carolina, which made a new departure with her "State-dispensary" system in 1892, and amended the system in 1895, reorganized it considerably in 1896. An important measure, known as the "Raines liquor law," passed the New York Legislature. According to Mr. Durand it "transfers the power to grant licences from the local authorities to a State department, increases the rates, and provides that a considerable proportion of the revenue from this source (amounting to about £800,000 for the first year) shall go to the State." The Act also authorizes local option in townships, requiring every township to vote thereon at the next election, and on the petition of 10 per cent. of the electors at any election thereafter.

Ohio increases the rate for liquor licences from $250 to $350, while Iowa provides that, where there is no municipality, one-half of the liquor taxes is to be assigned to the repair of the roads. In the matter of restriction, further steps are taken in local legislature. Thus New Jersey prohibits licence for sale within one mile of any camp meeting grounds; Ohio prohibits the sale of liquor within one and a half mile of soldiers' homes; while New York, perhaps more wisely, permits the sale of ale and beer at these institutions. Virginia prohibits sale under any circumstances to minors or students.

The manufacture and sale of cigarettes, already under the ban of the law in many States, are now prohibited in Iowa.[1] On the other hand, Maryland, which formerly required a licence of $50 for the sale of cigarettes, now reduces the tax to $10.

The most notable educational measures of 1896 are thus summarized by Mr. Durand:—"Utah and South Carolina have reorganized

[1] Note, however, that an anti-cigarette law, passed by the Tennessee Legislature, has been recently declared unconstitutional by the U.S. Circuit Court in that State.

their public school systems, while the department of education in New York has been remodelled with decided improvements. New York further extends the provision allowing the instruction of pupils at the expense of their home districts in the schools of other districts having better facilities, and, following the lead of Massachusetts, allows the cost of their conveyance to and fro to be a public charge. Iowa and New York have authorized any school district to establish free kindergartens, a measure previously adopted in three or four States." Kentucky, for the first time, enacts a compulsory education law, making a provision common in America that there shall be separate schools for white and coloured children. A constitutional amendment in Missouri, reducing the minimum age of attendance from six to five, has been rejected by the people. In some States school commissioners may, if supported by popular vote, provide school books free to the pupils, and this provision is made in Iowa. Maryland, following a previous law of Vermont, goes further, and authorizes the commissioners to purchase the books at the expense of the State. A measure passed by Ohio on this subject is very parochial in character. The State commissioners are to obtain terms from the publishers not exceeding 75 per cent. of the regular wholesale prices: local boards may adopt only books so furnished, and must sell them to the pupils at not over 10 per cent. advance. The text-books must not be changed oftener than once in five years.

With regard to matters relating to citizenship, the constitutional amendment in Oregon, which proposed to allow negroes to reside in the State,[1] was not voted upon for lack of special act of submission. Aliens may not hereafter acquire more than five hundred acres of land in South Carolina, but restrictions of this character are reduced in Iowa.

Provision is made in the State constitutions with respect to the exercise of the suffrage, and thus most changes of the law under this head have to be introduced as constitutional amendments. Woman suffrage is now established in a group of the Western States. Some time ago it was carried by amendment in Colorado and Wyoming: it was part of the original constitution of Utah, and it has now been adopted in Idaho. Radical California, however, has rejected it by popular vote, swayed, it is believed, by the liquor interests. Conservative restrictions on the exercise of the suffrage continue to be made. Washington requires ability to read and speak English; South Carolina, influenced by the negro bugbear, requires "two years' residence in the State, one in the county, and four months in the election district; and no one can vote unless he can both read and write a section of the

[1] See *Journal*, vol. i. p. 236.

constitution, or else has paid taxes on $300 worth of property." These amendments were passed by constitutional convention under the constitution of 1868, which does not require an appeal to the people. Similar restrictions, proposed by the Louisiana Legislature, were rejected by popular vote, a fate which would probably have overtaken the South Carolina amendments had an appeal to the people been required. Minnesota requires aliens to be naturalized three months before voting: they were formerly qualified on a mere declaration of intention to become naturalized. The same provision was rejected by the people in Montana. Texas is content with a declaration of intended citizenship six months before an election.

Further experiments in the use of voting machines are authorized. In addition to the McTammany, Abbott, and Myers machines mentioned in the legislation of 1895, the Davis machine is now to be tried in New York. Local option in this matter is to prevail. Thus, in New York either the Davis or the Myers machine may be used, in Connecticut either the Myers or the McTammany. A constitutional amendment permitting voting to be by other means than the ballot, if secrecy be preserved, was adopted in California, but rejected in Nebraska. The system of fixing a number of elections on the same day is a favourite device in the South for confusing the negro mind, but it cannot now stand the ordeal of a popular vote: we therefore note without surprise that a constitutional amendment requiring that parochial elections shall be on the same day as general elections has been rejected by the people in Louisiana.

As has been mentioned above, annual sessions of the Legislature still prevail in Massachusetts and Rhode Island. These sessions involve annual elections. A proposal to introduce biennial elections and sessions has been rejected by the people for the second time in Massachusetts. A similar proposal was rejected in Rhode Island for the second time in 1895.

"The past year," says Mr. Durand, "added two more to the steadily growing list of States (now numbering fifteen) that have adopted more or less satisfactory Corrupt Practices Acts." The words in brackets are interesting. It is generally supposed that the corruption which Americans themselves bewail, though with *sang froid*, flourishes in spite of the penal law. The admission here made would seem to show that, in all but fifteen States, the "machines" and "bosses" and the corporations who make "deals" with these American functionaries, merely render themselves obnoxious to the moral law. Penal laws against corruption are, however, hardly to be expected in States where the legislators are the humble servants of the "machines."

The two new adherents are Utah and Ohio. The Utah law, according to Mr. Durand, "is comparatively rudimentary, copying closely the original New York Act of 1890, with the bare requirement that candidates and committees report their election expenditures. In Ohio, on the other hand, the new statute assimilates the most desirable features of all the laws heretofore passed in the United States, and advances beyond them. The laws of Missouri and Minnesota are most nearly followed, but the limit of candidates' expenditures is placed at lower figures—not more than $100 where the election is to be by 5000 voters or less, and not more than $650 in any case whatever. Moreover, there is a new provision requiring a statement of their expenditures by all candidates for nomination to be made before the election. Somewhat as in Massachusetts, minute regulations are laid down concerning the accounts of political committees and of those acting for them or independently disbursing money in the campaign. The Act contains, however, no definition of legitimate or illegitimate payments."

Amid all the confused mass of experimental legislation in America, it is satisfactory to find that the efforts of the committee, formed only a few years ago for the promotion of uniformity of legislation, are attaining substantial success. Quite a large number of States have appointed commissions to act in co-operation with other States to this end. Among the departments of law in which uniformity is desired are marriage and divorce, wills, descent of property, negotiable instruments, insolvency. In 1896 three more States—Rhode Island, Maryland, and Virginia—appointed commissions.[1] By this agency, a Negotiable Instruments Bill has been drafted on the model of the British Bills of Exchange Act, and has already been passed in Connecticut, Colorado, Florida, and New York. It is said to follow, in cases of conflict, the decisions of the Supreme Courts of the United States.

Some amendments of the laws of employers' liability were made in 1896.[2] The liability of railroads for injuries to workmen by negligence of fellow-workmen is, in Mississippi, extended to all corporations, and contracting out is made void in Georgia.

[1] The first meeting of the Commissions took place at Saratoga in 1892, which was attended by representatives of seven States. The fourth was held also at Saratoga in 1894, at which twenty-two States were represented. There appear to have been no new adhesions in 1895, so that now about twenty-five States are taking part in the movement. An account of the work done and proposed will be found in a paper, "Uniform State Legislation," by Mr. F. J. Stimson, submitted to the American Academy of Pol. and Soc. Science, in 1895.

[2] A summary of the previously existing American Laws has been given above by Mr. Clay (pp. 13–17).

In other departments of labour legislation, Utah passes a law defining and prohibiting "black-listing;" Massachusetts requires citizens to be preferred to aliens on State and local public works; Utah establishes and Ohio gives extended powers to a board of arbitration. In New Jersey wages must be paid bi-weekly in all manufacturing establishments, and contracting out is not allowed. Weekly payments are required in Massachusetts. In New York the maximum day for minors is ten hours, and no child under fourteen may be employed except in school vacations and on certificate from the Board of Health. Seats must be provided for women in all mercantile establishments in New York and Maryland. Sweat-shops in Ohio are regulated by a provision that no clothing or tobacco is to be manufactured in rooms used for family purposes.

Every one who has paid any attention to the recent course of American law knows that both legislative and judicial bodies throughout the Union are running atilt against combinations in trade, the varieties of which are known as "pools," "trusts," and "combines."[1] The leading instance in legislation is the Act passed by Congress in virtue of its jurisdiction over Inter-State commerce, and known as the Sherman Anti-Trust Law of 1890. The following quotations will show alike its scope and its lack of precision—

"1. Every contract, combination, in the form of trust or otherwise, or conspiracy in restraint of trade or commerce among the several States, or with foreign nations, is hereby declared to be illegal. Every person who shall make any such contract, or engage in any such combination or conspiracy, shall be guilty of a misdemeanour, etc.

"2. Every person who shall monopolize, or attempt to monopolize, or combine, or conspire with any other person or persons to monopolize, any part of the trade or commerce among the several States, or with foreign nations, shall be deemed guilty of a misdemeanour," etc.

The Supreme Court of the United States has this year, by the narrow majority of five to four, found that an agreement between railroad companies, the reasonableness of which was hardly questioned, for establishing and maintaining rates of freight, was a contract in restraint of trade and a contravention of the Act.[2] The division of the judges reflects the state of public opinion generally. Some States, following the lead of Congress, have attempted to break up the trusts by constitutional amendment, others by special Act. The

[1] A reference to Dr. Murray's "New Eng. Dict." will show that the American use of this substantive is covered by authority.

[2] *U. S.* v. *Trans-Missouri Freight Association*, S. C. Rep., 1897. The brief of the Attorney-General for the U. S. is published in the *Yale Law Journal* for June, 1897.

language employed is, however, in general so vague that recourse must be had to the common law for the true meaning of "conspiracy" and "restraint of trade." Nearly all scientific lawyers, so far as one can judge, agree with the capitalists that the crusade is wrong in principle and hopeless in practice.[1] The decision of the House of Lords in the *Mogul* case is invoked in nearly all discussions, but generally in vain, for the trend of legislation is at present against "combines."

During the year under review further anti-trust laws have been passed by Utah, New York, Mississippi, and South Dakota. In the last-mentioned State the people have adopted a constitutional amendment prohibiting trusts and combinations. In Mississippi the law provides that any person producing or owning a commodity whose price is affected by a combination may recover $500 besides damages. Utah makes void all contracts for combinations, and renders corporations taking part therein liable to forfeit their franchises.

A special interest attaches to the course of legislation in the great commercial State of New York, where the recent Act requiring the Attorney-General to institute proceedings seems to show the futility of previous measures. One of the series of New York Acts is a curious specimen of legislation: "No stock corporation shall combine with any other corporation or person for the creation of a monopoly, or the unlawful restraint of trade, or the prevention of competition in any necessary of life. No foreign stock corporation formed by the consolidation of two or more corporations, or by the combination of the business of two or more persons, firms, or corporations, for the purpose of restricting or preventing competition in the supply of any article or commodity of common use, or for the purpose of establishing, regulating, or controlling the supply or price thereof, shall be authorized to do business in this State." The law further declares to be illegal and void "every contract, agreement, arrangement, or combination whereby competition in this State in the supply or price of any article or commodity of common use is or may be restrained or prevented."

In these laws the American legislatures are apt to dispense with definitions: they leave the construction of such expressions as "restraint of trade," "monopoly," "commodity of common use," and "preventing competition," to the courts; and there is as little uniformity in judicial decisions as in the findings of juries. As in most cases the judges are

[1] See "Recent Anti-Trust Legislation," by David Willcox, in the *Forum*, Sept., 1897; "Trade Combinations at Common Law," by Prof. F. J. Goodnow, in *Pol. Sci. Quarterly*, June, 1897; "Recent Economic and Social Legislation," by F. J. Stimson, in *Yale Review*, Nov., 1896; "The Right of Contract," by F. B. Thurber, in *N. Amer. Review*, Sept., 1897.

popularly elected, it is inevitable that they, as well as the juries, should give decisions more or less in accordance with the popular opinion respecting the combination for the time being attacked. Meanwhile trusts continue to be formed and to flourish. In some cases they are said to have acted oppressively, in such wise as to constitute a public injury; but I have not happened upon any sober indictment of their practices, which would justify a departure from the law of the *Mogul* case. It is generally admitted that the combinations of the great railroads have effected an immense reduction in the cost of transportation, while, in the department of commodities, the Standard Oil Company, the largest and wealthiest corporation in the world, can point with pride to the reduction of the price of refined oil from 25·7 cents per gallon in 1871 to 4·9 cents in 1895.

English observers will watch with interest the progress of the campaign against combinations, but they may be reminded that it is not universally regarded in America as serious warfare, but rather as the temporary protest of the small traders, whom the combinations force to the wall. Owing to the peculiar methods of working the legislative machinery in America, it is comparatively easy for a dissatisfied class to get a remedial measure passed. One or two convictions may be obtained, but economic laws are apt to have their way; the combination spreads itself as a green bay-tree, and does not pass away, while the unhappy huckster either drifts off into other pursuits, or, as in the case of the Standard Oil Company, becomes the contented henchman of the corporation.

One reflection which enables "combiners" to sleep comfortably is that the anti-trust law will not be enforced or will not hit their particular ring; another is that the Act itself will be declared unconstitutional by the Courts. Already anti-trust laws which are directed against particular classes of combinations have been found to be unconstitutional as subversive of the principle of "protection of equal laws." One of the New York laws provides that the Attorney-General may bale any person before a Judge of the Supreme Court, and examine him on his books so as to fish up a case against him, the discretion as to actual prosecution being reserved, not to the Judge, but to the Attorney-General. Naturally the Supreme Court has declined to be put in such a position, and this inquisitorial procedure has been declared unconstitutional. It is also a violation of a provision of the Constitution against any one being compelled in a criminal case to be a witness against himself. On this salutary function of the Courts, Mr. Stimson, one of the most competent observers of American legislation, writes:—"Nearly all labour legislation and a great part of social and economic legislation is more or less in

danger of falling under these constitutional prohibitions. At a rapid guess I should say that nearly half of the social, economic, and labour legislation passed by State legislatures in the last ten years has been questioned upon constitutional principles, and of labour legislation, probably half has been actually annulled by them."[1] Great as are the benefits of a written constitution, it thus exercises a malign influence upon the Legislature: the opponents of unsound legislation lack the moral courage to reject it in the State-chambers, even when they could muster the power, and throw the odium of its annulment upon the Courts.

In municipal legislation, the year 1896 is rendered memorable by the Act which created "Greater New York" by the consolidation of the cities of New York and Brooklyn with the smaller municipalities of King's and Richmond Counties. The details of the new government were not stated in the Bill, but were to be supplied by subsequent charter. The Bill after its first passage was submitted as the law required to the Mayors of New York and Brooklyn, "who, after prolonged hearings, both disapproved it. They maintained that while doubtless a majority, though scarcely a large one, of the citizens of the proposed metropolis desired consolidation, the people were not generally in favour of uniting first and deciding on a frame of government afterward, especially if such a body as sits in Albany should have an indefinite part in that decision. After an exciting struggle, in which the party-whip was applied vigorously, the Legislature repassed the Bill in spite of this double veto."[2] The charter marks a further step in the path of American municipal legislation, which has unhappily led from democracy to autocracy, which has reduced the city Council to cyphers, and has thrown almost unlimited power and patronage into the hands of the mayor. Four more years of Tammany rule in New York may, it is hoped, induce the American people to revert once again to English precedent, to restore administrative power and patronage to the Council, including the election of its own Mayor, to require publicity for all acts of the Council and its committees, and to apply an effective Corrupt Practices Act and a rigorous and independent audit. It is curious to note that the splendid career of the British municipalities and the divergence of American methods began about the same time. The Municipal Corporations Act was passed in 1835: the Mayor of New York became separately elected by the people and divorced from the Council in 1834, the Mayor of Philadelphia in 1839.[3]

[1] *Yale Review*, vol. v. p. 253.

[2] E. Dana Durand, "Political and Municipal Legislation in 1896."

[3] Those who desire to study American municipal problems should consult the

The protests of a long-suffering public against the enormously high buildings which have sprung up in the great cities, in American parlance known as "sky-scrapers," are tardily bringing about legislative interference. Nothing is as yet effected in New York; but Massachusetts, which in 1892 limited the height of buildings in Boston to 125 feet, now limits it to 70 feet in any city where the building adjoins parks or boulevards. From the point of view of light and air, one would suppose that a "sky-scraper" was a less evil there than in the inner parts of a city.

The power of the bicycle is shown in the legislation of five States which impose a penalty for putting in roads substances likely to puncture tyres. One of them, New Jersey, authorizes townships to vote money for the construction of side paths.

The advance of woman appears in various items of legislation besides those relating to the suffrage. Utah requires that women teachers are to be paid the same salaries as males for the same service. In New Jersey, women may be appointed Masters in Chancery if they have been called to the Bar. In Massachusetts any woman may be appointed as Special Commissioner with powers of a notary public.

The pampering of army veterans still continues, though deprecated by the wiser sections of the community. Ohio, New York, and Massachusetts pass further laws, giving them a preferential claim to office in the civil service of the State. South Carolina increases the rate of State pensions, and Louisiana provides a free grant of 160 acres of State land for confederate veterans who received certain wounds, or their widows.

In the department of criminal law not much is to be noted. Three States, Georgia, South Carolina, and Ohio, pass laws against lynching, which will probably fail to affect the popularity of that procedure. In

admirable works of Professor F. J. Goodnow, of Columbia University, namely, "Municipal Home Rule" and "Municipal Problems" (Macmillan and Co.). I am aware that a return to English methods is considered impracticable in America. Mr. Storey, in his address to the American Bar Association in August, 1896, says, "Those who have studied these questions have substantially agreed that the best government is likely to be secured by giving the chief executive of the city greater power, and making him clearly responsible for results, by vesting in him the right of appointment and removal, and taking from the city council all voice either in the selection or confirmation of city officers." Yes; but the American municipal reformers seem to forget that a despotism without any security for obtaining a good despot is the worst form of government, and that by taking away all power and responsibility from the council they are dealing a blow to the principles of democracy; and that the interference of the state legislature in civic affairs is likely to increase rather than diminish so long as the city government is in the hands of an autocratic mayor and a dummy council.

Georgia a penalty is imposed for interfering with the sheriff in the discharge of his duty. South Carolina and Ohio give a right of action to persons injured or his heirs against the county. In regard to crimes against women, the age of consent is raised, but without uniformity, South Carolina and Virginia raising it to 14, Iowa to 15, Louisiana to 16, and Utah to 18.

THE IMMIGRATION OF COLOURED RACES INTO BRITISH COLONIES.

[*By Arthur Reginald Butterworth, Esq., of the Inner Temple, and sometime of the Bar of New South Wales.*]

LEGISLATION in the British Colonies regulating the importation or immigration of coloured labourers falls under one of two heads: I. Provisions having for their chief object the protection of the immigrants, while at the same time such immigration may or may not be encouraged. II. Provisions intended to restrict or to prohibit such immigration. The Statute Book of Natal, for example, contains a large number of Acts falling under the first head, for the purpose of regulating the introduction and management of Coolie immigrants—extending from an Ordinance of 1856 down to an Act of the present year (No. 14 of 1897) to amend the Indian Immigration Act, 1895; while the other class of legislation is also represented in that Statute Book by the Immigration Restriction Act, 1897 (No. 1). It is with the second class of legislation only that the present Paper deals.

It is now more than forty years ago since the increasing numbers of Chinese immigrants began to cause uneasiness in certain English-speaking countries. A strong feeling against such immigrants had manifested itself in the United States, especially in the Wild West, many years before it found expression in Bret Harte's poem "That Heathen Chinee," which was written in 1870. Not only did the popular sentiment re-echo

> "That for ways that are dark,
> And for tricks that are vain,
> The heathen Chinee is peculiar;"

but it seemed as though many an unhappy Colonist had, like Bill Nye, received a rude shock at finding himself outwitted by the possessor of a

Celestial smile, so "childlike and bland," in some game "he did not understand."

> "And he rose with a sigh,
> And said, 'Can this be?
> We are ruined by Chinese cheap labour'—
> And he went for that heathen Chinee."

A treaty was made on the 17th of November, 1880, between China and the United States for the purpose of regulating, limiting or suspending the coming of Chinese labourers to, and their residence in, the United States, but its provisions were not effective in preventing serious disorder; and on the 12th of March, 1888, a second treaty was concluded at Washington between those Powers, absolutely prohibiting Chinese labourers from coming into the United States for a period of twenty years, and at the end of that period it is to remain in force for another twenty years, unless either Government shall give notice to terminate it.

Victoria: 1855–1881.

Australasian legislation to restrict the immigration of Chinese began as early as 1855. By an Act passed in Victoria—No. 39 of 1855—the word "immigrant" was defined to mean any male adult native of China or its dependencies, or of any islands in the Chinese seas, or any person born of Chinese parents. If any ship carrying any "immigrants" arrived at any port in Victoria with a greater proportion of passengers than one to every ten tons of the ship's tonnage, the owner, charterer or master was made liable to a penalty not exceeding £10 for each passenger in excess. On arrival in port the master was to pay a sum of £10 for every "immigrant," and power was given to the Governor to levy from each immigrant such a sum as might be necessary for carrying out the Act. That Act was amended by an Act of 1857 (No. 41), and by a repealing Act of 1859 (No. 80) the definition of "immigrant" was amended by inserting after the words "Chinese seas" the words "not born of British parents," a definition which was repeated in several Acts, including that of 1865. The poll-tax for every "immigrant" arriving by ship remained at £10, but £40 was to be paid for every

[1] Much information on the subject of this Paper will be found in the *Correspondence relating to Chinese Immigration into the Australasian Colonies, with a Return of Acts passed by the Legislatures of those Colonies and of Canada and British Columbia on the subject*, presented to Parliament July, 1888. The text of the above Treaty will be found at pages 7, 8. The writer takes this opportunity of expressing his great obligation for much valuable information furnished to him on the subject of this Article by Mr. James R. Boosé, Librarian of the Royal Colonial Institute.

"immigrant" arriving "by any other means," and a yearly residence fee of £4 was to be paid by every "immigrant." "Residence fees" were abolished in 1862 (No. 132); and "entrance fees" were suspended for two years by No. 170 of 1863, but re-imposed by No. 200 of 1864. A repealing Act of 1865 (No. 259) abolished the poll-tax, which was not renewed until 1881.

South Australia: 1857–1881.

An Act to the same effect as the Victorian Act of 1855 was passed in South Australia in 1857 (No 3), the poll-tax being fixed at £10, but this was repealed in 1861 (No. 14), and for the next twenty years, until the Act of 1881 (No. 213) was passed, Chinese were free to come to South Australia. The Act of 1881 [1] contained provisions similar to the earlier Act of 1857.

New South Wales: 1861–1881.

A similar Act was passed in New South Wales in 1861 (No. 3) and was repealed in 1867 (No. 8), and from that date until the end of 1881 [2] Chinese were admitted free into that Colony.

Queensland, New Zealand: 1877–1881.

Meanwhile the Chinese immigration question was causing alarm in other Colonies. In 1877 the Queensland Legislature had adopted provisions similar to those of Victoria.[3] The poll-tax there was fixed at £10 whether the Chinamen arrived by sea or land.[4] In 1881 New Zealand (45 Vict. No. 47) adopted similar legislation.

Victoria: 1881.

In the same year New South Wales (45 Vict. No. 11) and Victoria (No. 723) made more stringent provisions. These two Colonies in December, 1881, passed Acts containing similar provisions, except that in Victoria the new poll-tax was limited to those arriving by sea.

[1] The vast District known as the Northern Territory was expressly excluded from this Act, but a Chinaman travelling overland from there became liable to the poll-tax if he approached within one thousand miles of Adelaide (s. 2). It appears that in 1888 the South Australian Government, notwithstanding this enactment, imposed a poll-tax of £10 upon every Chinaman landing in the Northern Territory: see Despatch of Lord Carrington (New South Wales) to Lord Knutsford, 1st of March, 1888, *Correspondence relating to Chinese Immigration*, No. 5, pp. 3, 4.

[2] The Act of 1881 (No. 11) was assented to on the 6th of December, 1881.

[3] 41 Vict. No. 8. [4] SS. 4, 5.

New South Wales: 1881.

The New South Wales Influx of Chinese Restriction Act, 1881, imposed a poll-tax of £10 on every Chinese person arriving in the Colony,[1] and if any Chinese should enter or attempt to enter the Colony without paying the tax, he became liable to a further sum of £10, and to twelve months' imprisonment, in default.[2] The Act limited the number of Chinese which might be brought into the Colony by any vessel to one Chinese for every hundred tons of the vessel's tonnage.[3] The owner, master or charterer was made liable to a fixed penalty of £100 for every Chinese in excess of the proportionate number,[4] and the master to a penalty of £50 in addition to the poll-tax if he suffered any Chinese to land or escape before the tax was paid.[5] If a Chinaman could satisfy the Government that he was at the passing of the Act a *bonâ fide* resident of the Colony, and that he desired to leave it for a temporary purpose only, he could obtain a certificate of exemption from those provisions for a time to be specified.[6] Chinese who were British subjects,[7] and those who were duly accredited either by the Chinese or British Government,[8] and those belonging to the crew of a vessel were expressly exempt.[9] Penalties could be recovered in a summary way before Magistrates by an officer of Customs, and stringent powers were conferred on the Colonial Treasurer for the detention of suspected vessels.[10]

Western Australia: 1884–1886.

In 1884 the Imported Labour Registry Act was passed in Western Australia.[11] Under this Act a labourer "means any person apparently a native of India, China, Africa, or of the Islands of the Indian or Pacific Oceans, or of the Malayan Archipelago, and brought into the Colony as a labourer, or servant, or for any other similar employment."[12] The Act prohibits any "labourer" being brought into the Colony unless a contract had been made with him[13] previously to his shipment,[14] and prescribes the form of such contract,[15] and that lists of such labourers, and medical certificates with respect to them, were to be furnished by the master of the vessel before landing any.[16]

By an Act of 1886 (No. 13) a poll-tax of £10 was placed on every Chinese immigrant,[17] and the number arriving by sea was limited to one

[1] 45 Vict. No. 11, ss. 4, 5, 14. [2] S. 6. [3] SS. 2, 3, 14.
[4] S. 3. [5] S. 4. [6] S. 9. [7] S. 10. [8] S. 11.
[9] S. 12. [10] S. 13. [11] 48 Vict. No. 25. [12] S. 3.
[13] S. 4. [14] S. 5. [15] S. 6. [16] SS. 7–12.
[17] 50 Vict. No. 13, ss. 4, 5.

for every fifty tons,[1] but "labourers" under the Act of 1884 were exempted.[2]

Queensland, Tasmania: 1884–1887.

In 1884 Queensland further limited the number of Chinese passengers arriving by sea to one for every fifty tons,[3] and raised the poll-tax to £30.[4] In 1887 Tasmania followed suit by an Act, which limited the number of Chinese to one for every hundred tons,[5] and fixed the poll-tax at £10.[6]

Chinese Influx, 1888.

In the year 1888 events occurred which gave great prominence to this subject in Australia, and led to much correspondence between the Governors of the various Colonies, the Colonial Office, the Foreign Office and the Chinese Legation in London respectively.[7] On the 27th of April the s.s. *Afghan* arrived at Port Phillip Heads from Hong Kong with 268 Chinese immigrants on board, sixty of whom expected to land near Melbourne. The Government of Victoria would not permit them to land, and pointed out to the ship's agents that the penalty of £100 for each immigrant on board in excess of one to every hundred tons could be enforced as soon as the ship arrived in a Victorian port, whether the immigrants landed or not.[8] In the result all the Chinese returned to the ship, and the *Afghan*, with three other vessels having similar passengers, set out for Sydney Harbour. The neighbouring Colony of New South Wales was suddenly thrown into a state of ferment. Large and excited meetings were held in Sydney, and the Government declared their intention of not allowing any Chinese passengers to land. The Premier, Sir Henry Parkes, expressed his belief that the Supreme Court had no power to issue a writ of *habeas corpus* in such a case,[9] and gave orders to prevent any Chinaman landing.[10] Meanwhile the four

[1] S. 3.

[2] S. 12. The effect of this legislation is discussed in the Despatch of Sir F. Napier Broome (Western Australia) to Lord Knutsford, 5th of May, 1888, *Correspondence relating to Chinese Immigration*, No. 72, pp. 39, 40.

[3] 47 Vict. No. 13, s. 3. [4] S. 4. [5] 51 Vict. No. 9, s. 3. [6] S. 4.

[7] See *Correspondence relating to Chinese Immigration*, July, 1888, referred to in note, *ante*, p. 337. In South Australia and New Zealand the Governments adopted the expedient of ordering quarantine in order to exclude temporarily the Chinese, proclaiming all Chinese ports to be infected. See *ibid.*, pp. 4, 51, 55.

[8] Despatch of Sir H. B. Loch (Victoria) to Lord Knutsford, 10th of May, 1888, No. 83, *ibid.*, pp. 46, 47; cf. No. 71, pp. 38, 39.

[9] "New South Wales Parliamentary Debates," 15th of May, 1888, p. 4696.

[10] Ibid., 16th of May, p. 4787.

ships had entered the harbour and had come up to one of the wharves, where police were stationed under orders to prevent any Chinaman from landing. The Supreme Court was suddenly deluged by applications for writs of *habeas corpus* calling upon the Inspector of Police to show cause why the Chinamen making the applications should not be released from their ship. One class of applicants were the holders of certificates of exemption under s. 9 of the Act of 1881.[1] A second class of applicants were new arrivals in the Colony, who tendered the poll-tax of £10. In the case of both these classes, the Court declared that the detention of the applicants by order of the Government was illegal, and made the rule for a *habeas corpus* absolute.[2] In a third class of case, the applicant had been granted letters of naturalization in Victoria, but the Court held that such letters conferred no right to enter New South Wales without paying the poll-tax.[3]

In Victoria one of the Chinese on board the s.s. *Afghan* raised a question as to his rights in another form. He brought a civil action against the Collector of Customs, who, he alleged, refused to accept £10 which the master of the vessel offered to pay as the tax for him. The Supreme Court by a majority of four Judges to two upheld his right of action,[4] but this judgment was reversed by the Privy Council. It was admitted that the s.s. *Afghan* arrived in port with 268 Chinese immigrants on board, being 254 more than she might lawfully bring under s. 2 of the Act of 1881, and the master of the vessel, having thus committed an offence, had no right, in the opinion of the Privy Council, to require the Collector to receive payment in respect of such immigrants, and the Collector was under no legal obligation to do so. Further, their Lordships held that the refusal to permit an alien to enter British territory gives him no right of action in a British Court.[5]

The Sydney Conference, 1888.

On the 12th of June, 1888, a Conference of representatives of the various Australasian Governments (New Zealand excepted) was held in Sydney, and numerous resolutions were passed on this subject. It was

[1] *Ante*, p. 339.

[2] Ex parte *Lo Pak*, "9 New South Wales Law Reports," p. 221; ex parte *Leong Kum*, ibid., p. 250; ex parte *Woo Tin*, ibid., p. 493.

[3] Ex parte *Lau You Fat*, ibid., p. 269.

[4] *Toy* v. *Musgrove* (1888), "14 Victorian Law Reports," p. 349; "10 Australian Law Times," p. 60.

[5] *Musgrove* v. *Chun Teeong Toy* (1891), A. C. 272. With respect to the right of aliens to enter British territory, see an Article in the *Law Quarterly Review*, 1890, vol. 6, p. 27, by Mr. W. F. Craies, where the question of the alleged prerogative of the Crown to exclude or expel aliens is discussed with much learning and research.

pointed out by the Conference to the Colonial Office that as the Colonies had "reason to dread a large influx from China, the several Governments feel impelled to legislate immediately to protect their citizens against an invasion which is dreaded because of its results, not only upon the labour market, but upon the social and moral condition of the people."[1] Meanwhile the Conference urged that the exclusion of all Chinese, except officials, travellers, merchants, students, and similar classes, "should be brought about by international agreement of a friendly nature, as in the case of the United States."[2] By way of assisting to bring about such an understanding, the Conference recommended the abolition of the poll-tax in the Colonies.[3] The Colonial Governments had felt called upon to take strong and decisive action in so serious a crisis, but they declared that they had been studious of Imperial interests and of international obligations, while they confidently relied upon the support of Her Majesty's Government to prevent their country being overrun by an alien race, whose presence in any number would be a source of constant danger.[4] The Conference by a unanimous resolution expressed its opinion "that the desired restriction can best be secured through the diplomatic action of the Imperial Government, and by uniform Australasian legislation;" and a Draft Bill to be introduced into the several Colonial Parliaments was agreed upon.[5]

New South Wales: 1888.

Meanwhile a Bill had already been introduced and was then before the Parliament of New South Wales to repeal the Act of 1881, "to provide for the protection of the Colony from the disturbances and national dangers of Chinese immigration," and "to indemnify the Government for all acts done by Executive or Ministerial authority in relation to Chinese immigrants or vessels carrying such immigrants since the 1st of May, 1888." The Conference agreed that this Bill should be proceeded with, but as soon as two Colonies had passed the Conference's Draft Bill, the New South Wales Ministers agreed to bring their law into strict harmony with that of the other Colonies, reserving the right to make variations not inconsistent with the main principles of the agreement.[6]

In this state of things, on the 11th of July, the Chinese Restriction

[1] Telegraphic Despatch of Lord Carrington (New South Wales) to Lord Knutsford, 14th of June, 1888, No. 78, at p. 43 of *Correspondence relating to Chinese Immigration*, July, 1888.

[2] *Ibid.* [3] *Ibid.* [4] *Ibid.*, p. 44.

[5] *Ibid.* A summary of the Draft Bill is printed in No. 84, *ibid.*, p. 48.

[6] Despatch of 15th of June, 1888, No. 80, *ibid.*, p. 45.

and Regulation Act, 1888, was assented to in New South Wales.[1] The Act of 1881 was repealed.[2] All members of the Executive, and persons acting under their directions, who had prevented the landing of Chinese were indemnified in respect of their acts.[3] The poll-tax was raised from £10 to £100 a-head,[4] and the penalty for attempting to evade it from £10 to £50, or two years' imprisonment in default.[5] Meanwhile the limit of Chinese brought into the Colony by any vessel was altered to one Chinese for every three hundred tons of tonnage, and the owner, master or charterer was made liable to a penalty of £500 for every Chinese in excess,[6] while the master was liable to a like penalty in addition to the poll-tax in respect of any Chinese whom he suffered to land or to escape before the tax was paid.[7] No provision was made in this Act for granting certificates of exemption to Chinese desirous of temporarily leaving the Colony, but in other respects the exemptions were similar to those of the former Act.[8]

During the forty years preceding the Act, 908 certificates of naturalization had been issued in this Colony to Chinese.[9] The Act declared that no such certificate was to be issued in future on any ground whatever.[10] No Chinese was to be permitted to engage in any mining pursuit, without express authority from the Minister for Mines.[11] This Act is still in force.

South Australia, Victoria, Western Australia, Queensland: 1888–1890.

The Draft Bill, approved by the Conference at Sydney,[12] was introduced and became law in almost identical terms in South Australia[13] and in Victoria[14] in 1888, in Western Australia[15] in 1889, and in Queensland[16] in 1890. By its provisions the poll-tax was repealed, but the number of Chinese passengers in any vessel arriving was limited to one for every five hundred tons' burthen, with a penalty of £500 for each Chinese in excess of the number. Any Chinese who should enter the Colony by land without first obtaining a permit was liable to a penalty.

[1] 52 Vict. No. 4. [2] S. 1. [3] S. 2.
[4] SS. 6, 7. [5] S. 8. [6] S. 5. [7] S. 6.
[8] SS. 12, 13, 15. As to the exemptions of 1881, see *ante*, p. 339.
[9] "Statistical Register for 1895 and Previous Years," by T. A. Coghlan, Government Statistician (N. S. Wales), p. 777.
[10] S. 3. [11] S. 11.
[12] See *ante*, p. 342. [13] 51 & 52 Vict. No. 439.
[14] 52 Vict. No. 1005. The provisions were merely re-enacted in the Consolidating Act of 1890, 54 Vict. No. 1073.
[15] 53 Vict. No. 3; certain minor amendments were made in 1893 by 57 Vict. No. 32.
[16] 53 Vict. No. 22.

The Act extended to every person of Chinese race, except persons duly accredited by any Government as its representative, or on any special mission; the crew of a vessel not landing, except on duty; persons exempted by the Governor's proclamation; and Chinese naturalized in the individual Colony, who register each departure and return.

New Zealand: 1888.

New Zealand, as we have seen, took no part in the Conference at Sydney, and was content to alter the existing law by diminishing the proportion of such immigrants arriving, which in future was to be one for every hundred tons. This was enacted by a temporary Act,[1] which was made permanent in the following year.[2]

Effects of Australasian Legislation.

In this state legislation remained for some years; and at this stopping-point it is not uninteresting to see what light is thrown on the subject by statistics.

In 1854 the Chinese in Victoria numbered 2000; in 1857, 42,000; in 1863, 20,000.[3]

In the census of 1891 the number of Chinese (full-blood) in New South Wales is returned at 13,289, of whom only 156 were female. The half-castes numbered 867.[4] In Victoria the number of Chinese was (full-blood) 8489, of whom 134 were female; and half-caste 888.[5] In Queensland the Chinese numbered 8574, in South Australia (approximately) 3976, in Western Australia 917, in Tasmania 939, and in New Zealand 4444. These figures show an increase over the census numbers of 1881 in New South Wales of 3951, in Western Australia of 772, in Tasmania of 95; and a decrease in Victoria of 2751, in Queensland of 2655, in South Australia of 175, and in New Zealand of 560.[6] In the ten years, therefore, from 1881 to 1891, there had been an increase in three Colonies amounting to 4818, and a decrease in four Colonies amounting to 6141, showing a total decrease of 1323.

The effect of the restrictive legislation of each of the two Colonies of New South Wales and Victoria is further illustrated by the following

[1] 52 Vict. No. 34. [2] 53 Vict. No. 18.

[3] *Correspondence relating to Chinese Immigration*, in No. 44, at p. 25.

[4] "Statistical Register for 1895," p. 754.

[5] "Victorian Year Book for 1890-91," by H. H. Hayter, Government Statist of Victoria, p. 492.

[6] Ibid., p. 500, from which these figures are taken, except in the case of New South Wales, where the figures are taken from the Census.

figures. In New South Wales the number of Chinese arriving by sea exceeded that of those leaving by sea in 1886 by 1209, in 1887 by 1663, in 1888 by 286, but was less than those leaving by sea in 1889 by 934, in 1890 by 622, in 1891 by 564, in 1892 by 734, in 1893 by 524, in 1894 by 551, in 1895 by 319.[1] In the three years, therefore, from 1886 to 1888 the number of immigrants by sea exceeded that of the emigrants by 3158, but in the seven years from 1889 to 1895 the number of emigrants by sea exceeded that of the immigrants by 4248. In Victoria the number of Chinese arriving by sea exceeded that of those leaving by sea in 1886 by 616, in 1887 by 1147, and was less than those leaving by sea in 1888 by 210, in 1889 by 531, in 1890 by 361, in 1891 by 311, in 1892 by 125, but again exceeded the latter in 1893 by 587, in 1894 by 1, and in 1895 by 153.[2] In these ten years, therefore, while in New South Wales the number of Chinese emigrants by sea had exceeded that of the immigrants by 1090, in Victoria the number of immigrants exceeded that of the emigrants by 966.

The prohibitive effect of the action of the Government and of the legislation of 1888 in New South Wales is also illustrated by the amount produced in each of the ten years, 1886 to 1895, by the tax on Chinese. In 1886 it was £12,840, in 1887 £17,980, in 1888 £4710, in 1889 £100, in 1890 £300, in 1891 £100, in 1892 £100, in 1893 £700, in 1894 £300, and in 1895 £200.[3]

Canada.

Turning from Australasia to other parts of the British Empire, the Dominion of Canada next calls for attention.

Immigration is one of those subjects with respect to which the Parliament of Canada may legislate, and the legislation of each Province may also make laws which are not repugnant to any Act of Canada.[4] In 1885 the Chinese Immigration Act was passed by the Parliament of Canada, imposing a poll-tax of fifty dollars on every Chinese immigrant entering Canada,[5] while the number of such immigrants brought by any vessel was limited to one for every fifty tons of its tonnage.[6] The master of such vessel was liable to pay the poll-tax[7] under a penalty of not less than five hundred dollars nor more than one thousand dollars, and in default of payment to imprisonment for not more than twelve months, and the vessel should be forfeited to Her Majesty.[8] No such

[1] "New South Wales Statistical Register for 1895," p. 774.
[2] Statistical Registers of Victoria for various years.
[3] See Statistical Registers (N. S. Wales) for various years.
[4] (Imperial) British North America Act, 1867, 30 & 31 Vict. c. 3, s. 95.
[5] 48 & 49 Vict. c. 71, s. 4. [6] S. 5. [7] S. 6. [8] S. 7.

immigrant was to be landed until a permit had been granted.[1] A tax of like amount was imposed on every Chinese immigrant entering Canada otherwise than from a vessel.[2] A certificate of leave to depart and return was to be granted on certain terms.[3] By an Amending Act of 1887 exemptions from the Act were made in favour of the wife of a person not of Chinese origin who was herself a Chinese,[4] and of persons of Chinese origin merely passing through Canada by railway.[5]

British Columbia.

Meanwhile, prior to the Dominion passing these laws, the province of British Columbia had legislated on the subject.

In 1878 the Chinese Tax Act was passed in British Columbia (c. 35). It recited that Acts were in force providing for the collection of taxes on real and personal property, income, unoccupied land, and a tax for the maintenance of schools, and that large numbers of Chinese evaded the payment of such taxes, and it proceeded to enact that every Chinese person over twelve years of age should take out a licence every three months, for which he should pay ten dollars.[6] In 1884 three Acts were passed in British Columbia dealing with Chinese. By one of these, Chinese were prohibited from acquiring Crown land or any authority to divert water from its natural channel;[7] by another Act, it was declared unlawful for any Chinese to come into the Province, and a penalty of fifty dollars was imposed for any infringement;[8] while any person assisting a Chinese to enter the Province was subject to a penalty of two hundred dollars.[9] The third Act recited that the incoming of Chinese largely exceeded that of any other class of immigrant, that they were "governed by pestilential habits," were "useless in instances of emergency," and other matters generally disparaging to their character, and proceeded to make a number of special regulations as to their government.[10] By the Municipal Elections Act, 1896, Chinese, Japanese and Indians were disqualified from voting at those elections.[11]

[1] S. 8. [2] S. 12.

[3] S. 14. This section is slightly varied by 55 & 56 Vict. c. 25, s. 1.

[4] 50 & 51 Vict. c. 35, s. 1.

[5] S. 2. By the Immigration Act ("Revised Statutes," 1886, c. 65, vol. i. p. 949) the Governor-in-Council is authorized by proclamation to prohibit the landing in Canada of paupers (s. 23), or of persons of criminal or other vicious class, and may order vessels bearing such persons to take them back (s. 24).

[6] S. 2. [7] C. 2, s. 1. [8] C. 3, s. 2.

[9] S. 3. These provisions were re-enacted in 1885 (c. 13). The Act, however, was disallowed by the Dominion Government as being *ultra vires* of the Provincial Legislature.

[10] C. 4. This Act was likewise declared to be *ultra vires* by the Supreme Court of British Columbia. See *Journal of Legislative Assembly*, 1886, vol. xv., p. 2.

[11] 59 Vict. c. 38, s. 7.

Natal.

Coming next to the Colony of Natal, it has been already seen[1] that from 1856 a number of Laws were passed regulating the introduction and management of Coolie immigrants;[2] and under Law No. 15 of 1880 an Indian Immigration Trust Board was created and incorporated, and a whole series of amending Laws had been passed.[3] The main object of these, however, being rather to make regulations for the protection and management of Coolie labourers than to prohibit their being brought into the country, they are outside the range of our present subject. No Bill with the express object of restricting immigration appears to have been introduced until 1896, when the Bill, which has since become law as No. 1 of 1897, was under discussion.[4]

Conference in London, 1897.

The account of legislation on this subject has now been brought down to the year 1896, when further legislation was under consideration in various Colonies for rendering still more stringent the regulations against the importation of coloured labour. In January, 1897, the Secretary of State for the Colonies, Mr. Chamberlain, issued invitations to the Premiers of the self-governing Colonies to be present in London at the Queen's Jubilee, and in June and July of this year the Premiers of Canada, of Newfoundland, of all the seven Australasian Colonies, of Cape Colony, and of Natal assembled at the Colonial Office for the purpose of discussing informally certain Imperial questions with the Colonial Secretary.[5] In opening the proceedings on the 24th of June, Mr. Chamberlain made a speech in the course of which he said:

"I wish to direct your attention to certain legislation which is in process of consideration, or which has been passed by some of the Colonies, in regard to the immigration of aliens, and particularly of Asiatics.

"I have seen these Bills, and they differ in some respects one from the other, but there is no one of them, except perhaps the Bill which

[1] *Ante*, p. 336.

[2] See Law No. 2, 1870, repealing prior Laws on the subject.

[3] See Law No. 25, 1891, repealing prior Laws, and the amending Laws No. 17, 1895; No. 7, 1896; and No. 14, 1897.

[4] The Debate on the second reading of this Bill contains much information on the question of coloured labour as affecting Natal, *Debates of Legislative Assembly*, 1897, vol. xxv., pp. 64 *et seq.*, 108 *et seq.* As to the Act itself, see *post*, p. 351.

[5] *Proceedings of a Conference between the Secretary of State for the Colonies and the Premiers of the Self-governing Colonies, at the Colonial Office, London, June and July*, 1897, presented to Parliament, 31 July, 1897.

comes to us from Natal, to which we can look with satisfaction. I wish to say that Her Majesty's Government thoroughly appreciate the object and the needs of the Colonies in dealing with this matter. We quite sympathize with the determination of the white inhabitants of these Colonies which are in comparatively close proximity to millions and hundreds of millions of Asiatics that there shall not be an influx of people alien in civilization, alien in religion, alien in customs, whose influx, moreover, would most seriously interfere with the legitimate rights of the existing labour population. An immigration of that kind must, I quite understand, in the interest of the Colonies, be prevented at all hazards, and we shall not offer any opposition to the proposals intended with that object, but we ask you also to bear in mind the traditions of the Empire, which makes no distinction in favour of, or against race or colour; and to exclude, by reason of their colour, or by reason of their race, all Her Majesty's Indian subjects, or even all Asiatics, would be an act so offensive to those peoples that it would be most painful, I am quite certain, to Her Majesty to have to sanction it. Consider what has been brought to your notice during your visit to this country. The United Kingdom owns as its brightest and greatest dependency that enormous Empire of India, with 300,000,000 of subjects, who are as loyal to the Crown as you are yourselves, and among them there are hundreds and thousands of men who are every whit as civilized as we are ourselves, who are, if that is anything, better born in the sense that they have older traditions and older families, who are men of wealth, men of cultivation, men of distinguished valour, men who have brought whole armies and placed them at the service of the Queen, and have in times of great difficulty and trouble, such for instance as on the occasion of the Indian Mutiny, saved the Empire by their loyalty. I say, you, who have seen all this, cannot be willing to put upon those men a slight which I think is absolutely unnecessary for your purpose, and which would be calculated to provoke ill-feeling, discontent, irritation, and would be most unpalatable to the feelings not only of Her Majesty the Queen, but of all her people.

"What I venture to think you have to deal with is the character of the immigration. It is not because a man is of a different colour from ourselves that he is necessarily an undesirable immigrant, but it is because he is dirty, or he is immoral, or he is a pauper, or he has some other objection which can be defined in an Act of Parliament, and by which the exclusion can be managed with regard to all those whom you really desire to exclude. Well, gentlemen, this is a matter I am sure for friendly consultation between us. As I have said, the Colony

of Natal has arrived at an arrangement which is absolutely satisfactory to them, I believe, and remember they have, if possible, an even greater interest than you, because they are closer to the immigration which has already begun there on a very large scale, and they have adopted legislation which they believe will give them all that they want, and to which the objection I have taken does not apply, which does not come in conflict with this sentiment which I am sure you share with us; and I hope, therefore, that during your visit it may be possible for us to arrange a form of words which will avoid hurting the feelings of any of Her Majesty's subjects, while at the same time it would amply protect the Australian Colonies against any invasion of the class to which they would justly object." [1]

With reference to what passed at the Conference upon this subject the Secretary for the Colonies makes the following statement in his memorandum:

"On the question of the legislative measures which have been passed by various Colonies for the exclusion of coloured immigrants a full exchange of views took place, and though no definite agreement was reached at the meeting, as the Premiers desired to consult their colleagues and Parliaments on the subject, Her Majesty's Government have every expectation that the natural desire of the Colonies to protect themselves against an overwhelming influx of Asiatics can be attained without placing a stigma upon any of Her Majesty's subjects on the sole ground of race or colour." [2]

New Legislation passed or proposed in 1896–1897.

It is obvious from this statement that the question of coloured immigration cannot yet be regarded as settled. At the time of Mr. Chamberlain's speech on the 24th of June, of the Bills referred to only two had received the Royal Assent—that of Tasmania and that of Natal.

By the Coloured Races Immigration Act, 1896 of Tasmania—60 Vict. No. 55—which received the Royal Assent on the 26th of February, 1897,[3] the provisions of the Chinese Immigration Act, 1887,[4] are extended to all male persons of any coloured race inhabiting Asia, Africa, or any island adjacent to either, or in the Pacific or Indian Ocean, not being persons duly accredited by a Government.[5] Any person wholly or partially of European descent,[6] or of a native race of Australia or New Zealand, is exempt.[7] This Act, although it received

[1] *Proceedings of a Conference between the Secretary of State for the Colonies and the Premiers of the Self-governing Colonies, at the Colonial Office, London, June and July*, 1897, presented to Parliament, 31 July, 1897, pp. 13, 14.

[2] *Ibid.*, p. 18. [3] Order in Council of that date.

[4] As to this Act, see *ante*, p. 340 [5] S. 3 (1), (2). [6] S. 3 (3). [7] S. 3 (4).

the Royal Assent, appears open to some of those objections to which Mr. Chamberlain drew attention.

Bills on this subject were also sent home from New South Wales, South Australia, New Zealand, and British Columbia, but so far they have not received the Royal Assent.

The New South Wales Bill, reserved on the 23rd of November, 1896,[1] proposed to extend the stringent provisions of the Act of 1888[2] to all members of the same races as are specified in the Tasmanian Act,[3] and to repeal section 15 of the Act of 1888, which exempts Chinese who are by birth British subjects, or who have been naturalized in the Colony, and also to repeal the words "by birth a British subject or" in section 5 of the Act of 1888.[4] The effect of this, if the Royal Assent had been given to the Bill, would have been to extend the penal provisions of the Act of 1888—the £100 poll-tax, the limit of one person to every three hundred tons' burthen, the prohibition as regards mining, and naturalization—to every person of a coloured race (with the exception of those whom the Governor-in-Council might by proclamation exempt,[5] and of certain classes, including missionaries, merchants, etc.),[6] whether such person were male or female, or were by birth a British subject or not, and even though such person was the *bonâ fide* holder of a certificate of naturalization in New South Wales, or of an exemption certificate duly granted under the Act of 1881.[7]

The South Australian Bill, reserved on the 19th of December, 1896,[8] proposed to extend the restrictions of the Act of 1888 (which was founded on the Draft Bill of the Sydney Conference)[9] to all members, whether male or female, of the same races as are specified in the Tasmanian Act.[10] The Legislators of South Australia seem to have had an idea that the Bill might prove of a very sweeping character, since they expressly exempt (among others) Members of the British House of Commons.[11]

New Zealand, by a short Act of 1896,[12] had raised the poll-tax on Chinese from £10 to £100,[13] and limited the proportion of such immigrants to one for every two hundred tons, in lieu of one hundred tons, of tonnage.[14] This Act was only to continue in operation until another,

[1] 60 Vict. No. 41. As to this Bill, see also *ante*, p. 162.
[2] As to this Act, see *ante*, p. 342.
[3] 60 Vict. No. 55, s. 3 (1), *ante*, p. 349.
[4] *Ante*, pp. 342–3. [5] S. 3 of the Bill. [6] S. 4 of the Bill.
[7] See s. 15 of the Act of 1888, which the Bill proposed to repeal. As to these certificates under the Act of 1881, see *ante*, p. 339.
[8] 59 & 60 Vict. No. 672. [9] *Ante*, p. 343.
[10] 60 Vict. No. 55, s. 3 (1), *ante*, p. 349. [11] S. 6.
[12] No. 19, see *ante*, p. 188. [13] S. 2. [14] S. 4.

the Asiatic Restriction Bill, should come into operation.[1] The latter Bill,[2] to which the Royal Assent has not been given, applied to all natives of Asia, not of European or Jewish extraction, except Indians who were British subjects.[3] The number of such Asiatics was limited in the proportion of one to every two hundred tons' burthen,[4] and the master of the vessel had to pay a poll-tax of £100 for each before landing.[5] No Chinese was in future to be naturalized, any Chinese who left the Colony not having been naturalized was to be liable to the tax.[6]

It will be remembered that in Mr. Chamberlain's speech on the 24th of June, the Natal Bill was singled out as the only one which the Government could perhaps regard with satisfaction. The Royal Assent had, in fact, been given to this Bill on the 5th of May. It is called the Immigration Restriction Act, 1897 (No. 1 of 1897)—and by its provisions the immigration into Natal, by land or sea, of any person of any of the following classes—called "prohibited immigrant"—is prohibited, viz:—

"(*a*) Any person who, when asked to do so, by an officer appointed under this Act, shall fail to himself write out and sign, in the characters of any language of Europe, an application to the Colonial Secretary in the form set out in Schedule B. of this Act.

"(*b*) Any person being a pauper, or likely to become a public charge.

"(*c*) Any idiot or insane person.

"(*d*) Any person suffering from a loathsome or a dangerous contagious disease.

"(*e*) Any person who, not having received a free pardon, has within two years been convicted of a felony or other infamous crime or misdemeanour involving moral turpitude, and not being a mere political offence.

"(*f*) Any prostitute, and any person living on the prostitution of others."[7]

Schedule B. contains a form of letter claiming exemption from the Act, and requiring to be filled in with various particulars as regards the writer. Any prohibited immigrant who contravenes the Act is liable to be imprisoned and to be removed from the Colony.[8] The master and owners of any vessel from which any prohibited immigrant may be landed shall be jointly and severally liable to a penalty of not less than £100, which may be increased up to £5000 by sums of £100 each for

[1] S. 6. [2] 1896, No. 64. [3] S. 2.
[4] S. 3. [5] S. 5. [6] S. 18. [7] S. 3. [8] S. 4.

every five prohibited immigrants after the first five, and the vessel may be taken in execution.[1] The Act contains various provisions for conveying such immigrants out of the Colony,[2] for declaring their disabilities,[3] for preventing their entry,[4] for punishing offences in contravention of the Act, and for exempting certain persons and classes.[5]

A few days after Mr. Chamberlain's speech, and while the Conference was meeting, the Canadian Act to restrict the importation and employment of Aliens[6] received the Royal Assent—June 29th. By this Act it is made unlawful to assist or encourage the immigration of any alien or foreigner into Canada under an agreement to perform labour or service ;[7] any such agreement shall be void ;[8] and any persons or company making such agreement shall forfeit one thousand dollars.[9] The master of a vessel who knowingly brings in such alien may be indicted and fined up to five hundred dollars for each alien, and also imprisoned for not more than six months.[10] Aliens unlawfully landed may be sent back.[11] Servants of foreigners temporarily residing in Canada, skilled workmen in a new industry, actors, artists, singers, domestic servants, and intending settlers assisted by relatives or friends, are exempted from the Act,[12] which only applies to such foreign countries as retain in force laws applying to Canada of a similar character.[13]

The Province of British Columbia also brought forward an Alien Labour Bill, which has not yet received Assent.[14] Its object is, in the case of works carried on under what are known as "franchises"—*i.e.* the right to make a bridge, railway, road, etc., conferred by an Act—granted during that Session or thereafter, to prohibit the employment of any Chinese or Japanese person under a penalty of from ten to twenty-five dollars for each such person *per diem*.[15]

By the Companies Act, 1897, of the same Province it is enacted that nothing in Part VI. shall authorize the registration of any Chinese company or association.[16]

This brings to a close the review of legislation up to the present time. It is obvious, however, that the matter cannot stand where it is. The suggestion made by the Sydney Conference in 1888, that the question as regards the Chinese should be settled by a Convention between Great Britain and China, similar to that made between the United States and China, although adopted by Lord Salisbury, who instructed the British

[1] S. 8. [2] SS. 8, 10.
[3] S. 9. [4] S. 14. [5] S. 2.
[6] 60 & 61 Vict. c. 11. [7] S. 1. [8] S. 2. [9] S. 3.
[10] S. 4. [11] S. 6. [12] S. 5. [13] S. 9. [14] 1897, c. 1.
[15] SS. 2, 3. [16] 1897, c. 2, s. 145.

Minister to urge it upon the Chinese Government,[1] seems to have produced hitherto no palpable result. The Parliament of New South Wales is now making further endeavours to restrict the importation of coloured labour, and a Bill extending the provisions of the Chinese Restriction Act to other coloured races, not being British subjects, and also a Bill restricting immigration by imposing an educational test similar to that of the Natal Act, have passed the committee of the Legislative Assembly.[2] Should these Bills receive the Royal assent, no doubt similar legislation will be adopted in other Colonies.

[1] Despatch of Lord Salisbury to Sir J. Walsham, 22nd of June, 1888, No. 85, *Correspondence relating to Chinese Immigration*, p. 50.

[2] Telegram in the *Times*, 26th of November, 1897, dated Sydney, 25th of November.

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